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SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS

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April 1, 2016

REQUEST FOR PROPOSAL (RFP)

CALL BOX CALL ANSWERING CENTER

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), in cooperation with the Santa Cruz County Regional Transportation Commission SAFE, the Transportation Agency for Monterey County SAFE, and San Luis Obispo SAFE, invites your firm to submit a proposal for the operation of the SAFE call box answering center. Four contracts, one with each of the above mentioned SAFEs will result from this Request for Proposal (RFP).

The Request for Proposal (RFP) documents for this project are available for download on the MTC SAFE website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m. on Monday, April 25, 2016**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Consultant Selection Timetable of the RFP.

MTC SAFE Point of Contact
Stephen Terrin, Project Manager
Metropolitan Transportation Commission
Service Authority for Freeways and Expressways
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5605
E-mail: sterrin@mtc.ca.gov

Thank you for your interest.

Sincerely,
DocuSigned by:
Steve Heminger
Steve Heminger
Executive Director

SH: at

J:\CONTRACT\Procurements\Operations & Support Svcs\RFPs\SAFE\Call Box Call Answer Center\2016\Call Box Call Answering Center RFP 2016_final.docx

STEVE HEMINGER
Executive Director

ANDREW B. FREMIER
Deputy Executive Director

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I. AGENCIES AND PROJECT DESCRIPTION

A. *Description of MTC SAFE and Regional SAFEs*

MTC SAFE is a regional public agency created in 1988 pursuant to California Streets and Highways Code section 2550 *et seq.* to install, maintain and operate a motorist aid call box system in the nine San Francisco Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

SCCRTC is the Service Authority for Freeway Emergencies (SAFE) for Santa Cruz County. Created in 1972, the RTC SAFE owns and operates a system of 110 active call boxes along Highways 1, 9, 17, 129, and 152.

SLOCOG is the Service Authority for Freeways and Expressways (SAFE) for San Luis Obispo County. Created in 1996, SLOSAFE operates 154 call boxes along the following routes: Highway 1, 101, 166, 41 and 46.

TAMC is the Service Authority for Freeways and Expressways (SAFE) for Monterey County. Created in 1999, TAMC SAFE operates 190 call boxes along the following routes: SR 1, SR 68, SR 156, US 101, Jolon Road, Arroyo Seco Road, and Carmel Valley Road.

Together, MTC SAFE, SCCRTC, SLOCOG, and TAMC are referred to in this RFP as “SAFEs”. Collectively, SCCRTC, SLOCOG, and TAMC are referred to as “Regional SAFEs”.

B. *Project Description for MTC SAFE and Regional SAFEs*

MTC SAFE staff members manage day-to-day operations of the project including managing the current Call Answering Center contract and coordination with the California Highway Patrol (CHP) Golden Gate Communication Center (GGCC) and Caltrans District 4. CHP handles calls transferred from the Call Answering Center based on established protocol. Caltrans District 4 responds to transferred call box calls as appropriate. MTC SAFE employs third-party contractors to handle design, manufacturing, construction, and maintenance of the program and system.

Similarly, Regional SAFE’s staff members manage day-to-day operations of the project within their counties. CHP handles calls transferred from the Call Answering Center based on established protocol. The Regional SAFEs also employ third-party contractors to handle design, manufacturing, construction, and maintenance of the programs and systems.

The purpose of this RFP is to engage a Contractor to establish and operate a Call Box Call Answering Center (CAC) that will answer 100% of the voice and TTY calls generated by the MTC SAFE call box program, including 511 Freeway Assist calls, which are similar to call box calls with the exception that these calls are made from a motorist’s personal cell phone and their location is unknown. Voice calls from call boxes located in the Caldecott Tunnel and Posey/Webster Tubes are handled by Caltrans but TTY calls are handled by the CAC.

Three (3) additional separate contracts with the Regional SAFEs (SCCRTC, SLOCOG, and TAMC) may result from this RFP. The selected Contractor will be expected to answer 100% of the calls generated by their respective call box programs, subject to their respective terms and conditions.

II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the proposal (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

- Proposer must have at least two years of experience fully implementing and operating a call answering center that can handle more than 3,000 motorist aid calls each month and provide Spanish language services.

Experience handling urgent or emergency calls is desirable and may be relevant for proposer evaluation, but is not a minimum qualification. Additional technical minimum requirements for the call answering center are listed in *Appendix A-1*.

III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

A. *Scope of Work*

The scope of work for the project is provided in *Appendix A, Scope of Work*, which includes the Scope of Work for the Regional SAFEs. The firm selected to enter into a contract with MTC SAFE (“Consultant”) will be expected to perform all work and analysis necessary to complete the scope of work for MTC SAFE. The same firm will also enter into separate contracts with the Regional SAFEs and will be expected to perform all work and analysis necessary to complete the scope of work for the Regional SAFEs.

B. *Period of Performance*

MTC SAFE expects the work to commence on or about July 1, 2016, and to be completed no later than June 30, 2019. At MTC SAFE’s sole option, the contract may be extended for three (3) additional years for work contemplated by *Appendix A, Scope of Work*. The Regional SAFEs may at their sole discretion utilize the same period of performance and renewal options.

C. *Budget*

MTC SAFE has budgeted approximately \$75,000 annually for a total of two hundred twenty-five thousand dollars (\$225,000) for the initial contract term. Additional funding may be available in

future Fiscal Years subject to approval of future MTC SAFE budgets. Budgets for the Regional SAFEs will be determined at a later time, but are anticipated to be smaller than that of MTC SAFE.

IV. PROPOSERS' CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers' Conference will be held at 9:00 a.m., on April 13, 2016 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in the Lakeview Conference Room.

Any addenda will be posted on MTC SAFE's website. All Proposers are responsible for checking the website for any addenda to the RFP documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC SAFE no later than 4:00 p.m. on April 15, 2016 to guarantee a response or consideration. MTC SAFE reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

V. CONTRACTOR SELECTION TIMETABLE

9:00 a.m., on April 13, 2016	Proposers' Conference, at 101 8 th Street, Oakland, CA 94607, Lakeview Conference Room
4:00 p.m., on April 15, 2016	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date proposals are due.	Deadline for protesting RFP provisions
4:00 p.m., on April 25, 2016*	Closing date/time for receipt of proposals
Week of April 29, 2016*	Interviews/Discussions (if held)
May 5, 2016*	Date for receipt of Best and Final Offers (if required)
June 10, 2016*	Operations Committee Approval

**Interview, award and approval dates are approximate and are subject to change before or after the closing date of the RFP.*

VI. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m. on Monday, April 25, 2016. Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement. No proposals submitted solely by email and no faxed proposals will be considered.**
2. Proposals are to be addressed as follows:

Call Box Call Answering Center RFP
Attention: Stephen Terrin
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated**. MTC SAFE is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals
6. Proposer agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
7. A signed proposal submitted to MTC SAFE in response to this RFP shall constitute a binding offer from Proposer to contract with MTC SAFE and the Regional SAFEs according to the terms of the proposal for a period of one hundred eighty (180) days after the proposals are due to MTC SAFE.
8. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC SAFE Project Manager.
9. This RFP does not commit MTC SAFE or any Regional SAFEs to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.

11. MTC SAFE reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
12. MTC SAFE and the Regional SAFEs reserves the right in their respective sole discretion not to enter into any contracts as a result of this RFP.
13. If the selected Proposer fails to enter into a contract with MTC SAFE in a timely manner as determined by MTC SAFE, in accordance with the terms and conditions of this RFP, MTC SAFE reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer. This provision shall also apply to each of the Regional SAFEs.
14. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC SAFE Vendor Database.

VII. FORM OF PROPOSAL

Proposals must be signed in ink and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in MTC SAFE's sole discretion.

Each proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFP and any Addendum to the RFP. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of 180 days from the due date for proposals.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the Proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

C. Table of Contents

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should clearly convey the Proposer's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

E. Work Plan

This section should present a work plan for the tasks described in *Appendix A, Scope of Work*. The proposed work plan should:

1. Discuss how the Proposer will conduct the identified task, identify deliverables, and propose a schedule. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or sub-tasks the Proposer believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.
2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC SAFE and the Regional SAFEs, Proposer staff, and subcontractors, if any.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.

4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

F. Qualifications and References

1. Submit a completed *Appendix B, Minimum Qualifications*, to confirm the Proposer meets the Minimum Qualifications. In addition, Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the Scope of Work attached as *Appendix A*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. Provide at least one sample of a written technical report or memo and two samples of material developed for a similar study effort. The samples must have been prepared by key members of the Proposer's team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide three (3) client references with similar contracts of \$50,000 or more in the last three (3) years (including references for subcontractors, if applicable) and their contact information. At a minimum, provide the name of the contact person, email address, telephone number. It is the Contractor's responsibility to provide reliable and responsive references.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC SAFE, MTC, BATA, BAIFA or BAHA, or any of the Regional SAFEs in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

G. Cost Proposal

Submit Cost Proposal forms, as follows:

1. *Appendix B-1, Phase I Task Budget Proposal Form*. Provide a task budget for Phase I that breaks down costs for each item as it relates to Tasks 1 through 6 as described in *Appendix A, Scope of Work*.
2. *Appendix B-2, Phase II Price per Call Proposal Form*. Provide the call box call rate per call (All SAFEs) and the 511 Freeway Assist connection fee rate (MTC SAFE only).

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that the Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC SAFE's notice to firm that it is the successful Proposer.

The selected Contractor will also be required to meet the insurance requirements set forth by each of the Regional SAFEs.

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

J. Taxpayer Identification Number and Certification

Submit a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

VIII. PROPOSAL EVALUATION

A. *Verification of Minimum Qualifications*

The MTC SAFE Project Manager will review proposals to ensure that each proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The MTC SAFE Project Manager, in consultation with the MTC SAFE's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in Section VII, Form of Proposal. Proposers failing to meet the Minimum Qualifications listed in this RFP or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Section VII, Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC SAFE reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals will then be evaluated by an evaluation panel of comprised of MTC SAFE and representatives from each of the Regional SAFE's staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC SAFE Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Cost, inclusive of Phases I and II; Phase II will be weighted more heavily than Phase I. 511 Freeway Assist connection fee will be weighted more heavily than Base Rate Per Call. (50%)
2. Qualifications and Past Experience (25%)
3. Work Plan (25%)

D. Proposer Discussions

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer (with or without interviews), or to enter into discussions with a "short list" of Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the "short list" will be to identify to that Proposer's specific deficiencies and weaknesses in its proposal and to provide the Proposer with the

opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer's project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A Proposer on the "short list" invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

E. Site Visits

MTC SAFE may conduct site visits for those short-listed proposers that currently have an operational call center and use information gained from the site visits, in conjunction with the proposal, for evaluating Work Plan and Qualifications.

F. Request for Best and Final Offer

Following discussions, if held, Proposers on the "short list" will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance by MTC SAFE of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

MTC SAFE reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

G. Recommendation for Award

The panel will recommend a Proposer to the MTC SAFE Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the MTC Operations Committee for approval (if required). The panel will recommend the same Proposer for the Regional SAFEs contracts. For the Regional SAFEs, the award of the contract must also be approved by their respective approving bodies.

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the Proposer whose proposal is most advantageous to MTC SAFE based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC SAFE in a timely manner as determined by MTC SAFE, in accordance with

the terms and conditions of this RFP, MTC SAFE reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

The selected Contractor will be expected to enter into a total of four contracts, one per SAFE involved. Regional SAFE contracts may be executed concurrently with the MTC SAFE contract or at any time thereafter within the time period the proposal is required to remain firm under the terms of this RFP. MTC SAFE Standard Contractor Contract is attached as *Appendix D*. The Regional SAFE's Standard Contractor Contracts are attached as Appendix E, F, and G. If a Proposer wishes to propose a change to any standard contract provisions, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept each SAFE's standard contract provisions, unless such language is protested in accordance with Section C below.

For MTC SAFE, the selected Contractor will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) business days of MTC SAFE's notice that it is the successful Proposer. Requests to change MTC SAFE's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC SAFE will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC SAFE determinations on requests to change insurance requirements pursuant to the protest provisions of this RFP must be brought to MTC SAFE's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed. The selected Contractor will also be required to meet the insurance requirements set forth by each of the Regional SAFE's. Request to change the Regional SAFE's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions.

The four SAFE's contracts resulting from this RFP will be firm fixed price, with payment based on each SAFE's receiving of satisfactory deliverables of Tasks 1 through 6 for Phase I and based on call volumes and level of service (LOS) measures for Phase II. If the contracts are extended for the option period, payment will be based on a negotiated price per call by each SAFE. Each SAFE reserves the right to change LOS measures and expected/bonus levels upon execution of the option period.

C. Selection Disputes

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Proposer on the grounds that MTC SAFE procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date proposals are due, for objections to RFP provisions; or
2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or if applicable the date the MTC SAFE Operations Committee authorizes award, whichever is later, for objections to Proposer selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Operations Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC SAFE review officer to recommend a resolution to the MTC SAFE Executive Director.

The MTC SAFE Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC SAFE Executive Director, it may file a written appeal with the MTC Operations Committee, no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. The MTC Operations Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC SAFE shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC SAFE Executive Director or, if the decision of the MTC SAFE Executive Director is appealed, the issuance of the MTC Operations Committee's decision.

D. Public Records

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code §6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to MTC SAFE will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that MTC SAFE withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFP, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section VII of the RFP marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer’s competitive position. The Proposer requests that such data be used for review by MTC SAFE only, but understands that exemption from disclosure will be limited by MTC SAFE’s obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this proposal, MTC SAFE shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the cost proposal as confidential. Consequently, any language purporting to render any proposal forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that MTC SAFE withhold such data from disclosure and MTC SAFE complies with the Proposer’s request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC SAFE and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys’ fees that may be awarded to the party requesting such Proposer information); and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its proposal, and does not request that MTC SAFE withhold information marked as confidential and requested under the California Public Records Act, MTC SAFE shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC SAFE or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

Key Proposer personnel assigned to the project are expected to remain on the project. Any change in key personnel on the proposed project team is subject to prior written approval of MTC SAFE. Removal of any key personnel identified in the proposal without written consent of the MTC SAFE Project Manager may be considered a material breach of contract.

F. Conflicts Of Interest

By submitting a proposal, the Proposer represents and warrants that no commissioner, officer or employee of MTC SAFE is in any manner interested directly or indirectly in the proposal or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever MTC SAFE is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by MTC SAFE and the Proposer. After award, the winning Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC SAFE solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC SAFE; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this RFP if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this RFP.

G. Personally Identifiable Information

Proposer agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in *Attachment F, Special Conditions Relating to Personally Identifiable Information of Appendix D, MTC Standard Consultant Contract.*

H. Pre-Award Audit

Not Used.

I. Web-Based Communication

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the MTC SAFE Project Manager or his/her designee via a web-based system designated by MTC SAFE to which MTC SAFE will provide system access.

J. Payment, Sub-Contractor and Prevailing Wage Information

Proposer agrees to submit payment, sub-contractor utilization and if applicable certified payroll information for contracts with prevailing wage requirements via a web-based system designated by MTC SAFE to which MTC SAFE will provide system access.

APPENDIX A, SCOPE OF WORK

The selected Contractor is expected to perform all work necessary to establish and operate a Call Answering Center (CAC) capable of answering 100 percent of the calls generated by the MTC SAFE call box program, as well as by the Transportation Agency for Monterey County SAFE, Santa Cruz County Regional Transportation Commission SAFE, and the San Luis Obispo SAFE (collectively “the Regional SAFEs”). Most calls will first be answered by the CAC, and calls requiring relevant emergency and towing-related needs would then be forwarded to the GGCC or Monterey and SLO Dispatch Centers for completion. Certain calls from the MTC SAFE bridges and bridge approaches will be forwarded to Caltrans or the Golden Gate Bridge & Highway Transportation District (GGBHTD) for dispatch, while other calls will be completed by the CAC. The selected Contractor will be expected to coordinate all work efforts with MTC SAFE, GGCC, the Monterey, SLO CHP Dispatch Centers, and Caltrans Dispatch Centers for calls handled by their respective agencies.

Phase I, Set-Up and Implementation of Call Answering Center, is applicable to MTC SAFE and the Regional SAFEs. Wherever in Phase I, a task refers to MTC SAFE, it shall be deemed to refer to each respective Regional SAFE with respect to the work performed under contract with that Regional SAFE (except for tasks or portions thereof which are inapplicable to that Regional SAFE.) Additional requirements specific to the Regional SAFEs is detailed in a separate scope of work at the end of this Scope of Work.

PHASE I - SET-UP AND IMPLEMENTATION OF CALL ANSWERING CENTER

Task 1 – Planning and Design for CAC

- Determine phased transition of services
 - Contractor shall coordinate with MTC SAFE in the development of the transition plan.
 - Contractor shall schedule a meeting with MTC SAFE and current CAC to discuss, plan and execute transition schedule.
 - **Deliverable 1: Phased Transition of Service Plan and Schedule**
- Develop or Provide CAC Facilities and Systems Plan
 - Contractor shall supply a detailed facilities and systems plan for MTC SAFE approval. Only equipment used solely by MTC SAFE for its CAC operations shall be reimbursed. All equipment purchased by MTC SAFE shall remain property of MTC SAFE.
 - **Deliverable 2: Draft and Final Facilities and Systems Plan**
- Develop or Provide CAC operational policies and procedures
 - In coordination with MTC SAFE, contractor shall develop an operational policies and procedures manual to ensure proper operation of the CAC. Contractor may use existing policies and procedures and submit them for MTC SAFE approval.
 - **Deliverable 3: CAC Policies and Procedures**
- Develop or Provide training materials and associated materials

- The training program must be developed for operators, supervisors, and the trainers themselves. The CAC training aids will closely parallel the CHP manuals that will be provided by the MTC SAFE Project Manager. Detailed manuals and procedures need to be in place. Development of a formalized training program and curriculum will be specific to this application.

Contractor may use existing materials and submit them for MTC SAFE approval. This program will include:

- Training manuals
- Operating procedures and policies for dealing with other organizations
- Operator testing and evaluation criteria
- Teaching aids, including maps and highway identifications
- Investigation procedures for customer complaints
- Program management and coordination with MTC SAFE
- **Deliverable 4: Draft and Final Training Materials**
- Develop or provide emergency operating procedures and preparedness plan
 - The emergency operating plan should outline the procedures in the event the CAC's onsite computer and phone system fail. Calls should be automatically transferred to a backup CAC for the first two weeks of CAC failure under a contract negotiated by the selected CAC contractor. (Failures longer than two weeks will be covered by MTC SAFE's contract for the Backup CAC.) The plan should also outline the procedures if important hardware or software fails, including but not limited to the server, ACD, phone and T1 lines, and workstations. Contractor may use existing emergency procedures and plan and submit them for MTC SAFE approval.
 - **Deliverable 5: Draft and Final Emergency Operating Procedures and Preparedness Plan**
 - **Deliverable 6: Executed Contract for Emergency CAC Backup Services**
- Identify reporting needs and develop reporting mechanisms
 - At a minimum, the report shall include statistics identified in Task 7, bullet five.
 - **Deliverable 7: Schedule of report delivery, along with a sample report**

Task 2 – CAC Set-up (Physical Plant, Equipment and Software)

- Procure, install, and test Telecommunication Device for the Deaf (TTY/TDD) equipment
 - The Contractor shall equip each terminal with a screen-based TDD messaging feature so that any operator position can handle a TDD transmitted call from the call box. A TDD uses the TTY communication format, which is standard throughout the world. In cases where the call box caller asks the operator to send a message to a friend and/or family member who uses a TDD, the Contractor must be able to communicate with the TDD caller directly from the CAC's computer terminals. The TTY/TDD messaging feature should be fully integrated with the custom screens, and shall be capable of accepting calls from all MTC SAFE TTY call boxes.

- Develop, install, and test custom screens
 - Contractor shall provide MTC SAFE and CHP with all necessary licenses covering all the intended uses, with renewable terms covering, at a minimum, the initial term of the contract resulting from this RFP plus the possible extension periods. Contractor, with MTC SAFE staff assistance, shall obtain the CHP's CAD database describing call box locations. MTC SAFE, through its call box maintenance provider, shall notify Contractor of any changes to the call box location or other information to update the CAC's call box location database.
 - Contractor may use its existing sales or contract management software, traditional emergency or alarm system dispatching software packages that allow for a similar degree of customization of the interview screens and database development. The proposed software must be consistent with other elements of this RFP and must be demonstrated to MTC SAFE staff during the proposal review process that it reliably stores and retrieves the data and can send dual tone multi-frequency (DTMF) tones in any page of the custom screens to activate call box features. The custom screens' goal should be as automated, efficient, and user-friendly as possible and to minimize the operator's decision making and clarify exactly what to do and say in different situations. The number of screens should be minimized. These screens shall be developed cooperatively with MTC SAFE and contractor shall notify MTC SAFE of any changes to the custom screens.
- Develop remote monitoring web page for CHP and MTC SAFE,
 - The remote monitor web page accessible to MTC SAFE and its inspector shall have the ability to download recorded digital voice logs of the call, retrievable via the 24-hour log or by search. The webpage shall also allow sorting of incidents by all fields including but not limited to highway, time, operator, and incident type.
- Test integrated system
 - Contractor shall develop a test schedule in cooperation with MTC SAFE. A MTC SAFE staff member must be present at the test unless otherwise authorized in writing by MTC SAFE. Contractor shall fully document each test conducted and shall document and provide MTC SAFE the results of the test. Upon completion of the tests, contractor shall provide MTC SAFE with detailed reports on the results of all tests.
 - **Deliverable 8: Equipment Installation, Test Schedule and Test Result Report**

Task 3 – Operations Preparation and Set-up

- Record actual calls at existing CAC for training
 - Contractor in cooperation with the MTC SAFE Project Manager and the existing CAC contractor will monitor and record actual calls received at the existing CAC. These calls will be used for training purposes at the new CAC.
- Develop call scripts

- Contractor shall develop call scripts that logically prompt operators for caller responses and includes fields for all necessary information for assistance. A sample screen design is shown in *Appendix A-3, Sample Incident Screen Design* of which the Contractor shall base their scripts on but may deviate from, as appropriate. New and existing call scripts must be presented to MTC SAFE for approval.
- Call scripts must also be developed to handle 511 Freeway Assist calls. These scripts shall focus on location identification, but should also incorporate any requirements applied to the standard call scripts
- **Deliverable 9: Call Box Operator Call Scripts**
- Provide, train, and test CAC staff
 - Contractor shall work closely with MTC SAFE staff and CHP to hire (if needed), train, and test qualified and competent CAC supervisors and operators. Operators may be trained in one or two weeks depending on experience, and must be tested for proficiency. Training will also include listening to actual calls from the existing CAC as well as answering test calls. 511 Freeway Assist training requires intense geography training; some materials will be provided by MTC SAFE. Contractor shall notify MTC SAFE of the training schedules throughout this contract and MTC SAFE may monitor and/or attend any of the training sessions. In the event MTC SAFE designates a MTC SAFE employee to attend training, contractor shall provide the same training to the MTC SAFE employees as the CAC staff for this project.
 - **Deliverable 10: Staff list, operator schedule, and training schedule.**
- Establish translation services
 - Contractor is required to have a Spanish-speaking operator on shift 24 hours a day. Failure to do so is a material breach of contract. If a language is needed that is not spoken by the Contractor's operator staff, a translation service must be used. Additional translation services for languages spoken in the Bay Area must be provided through a telephone number accessible 24 hours a day, 365 days a year. Contractor shall ensure proper documentation of usage, including date, time, language, and duration of each call and provide totals by minutes and amount, as a part of the monthly invoice.
 - **Deliverable 11: Executed, Compliant Contract for Translation Services**

Task 4 – CAC Test Operations

- Review and revise, as necessary, call flows and types (current call flow diagram is *Appendix A-5, Current Call Flow Diagram*)
 - **Deliverable 12: Updated Call Flow Diagram**
- Update phased transition of services plan and confirm call flow routes
- Initiate test operations using approximately 100 call boxes
 - At least 100 call boxes that are within the first designated route will be programmed to be answered at the CAC. These call boxes will generate at least two to three calls per hour. Each operator will be expected to spend at least two shifts answering actual calls with the assistance of a trainer (observer) prior to

call boxes along the first route being fully programmed to the CAC. Additionally, 511 Freeway Assist calls will be used to test and train the operators. This final training step will be conducted for all shifts covering the 24-hour period.

- Attend CAC implementation meetings, either in person or via teleconference
 - The purpose of these meetings will be to discuss the CAC operation, coordination with CHP and MTC SAFE, program problems as well as areas of success.
- Develop monthly data report for both the fixed callbox calls and 511 Freeway Assist calls. The purpose of these reports is to count and categorize the various ways in which calls are handled following the format in *Appendix A-4, Sample Call Type Report*
 - **Deliverable 13: Call Type Reports for fixed callbox calls and 511 Freeway Assist calls.**

Task 5 – CAC Operations Roll-Out (Phased Transition)

- Provide trained staff and test additional staff
- Initiate operations sequentially on selected routes
 - Contractor shall initiate call answering operations along selected routes according to the Phased Transition of Service Plan and associated schedule developed in Task 1.
- Monitor program operations and implement any necessary corrective actions
 - In cooperation with MTC SAFE and CHP, Contractor shall monitor operational statistics, address operational problems as they occur, and implement any necessary corrective actions to address problems identified.
 - Contractor shall develop and distribute to all project partners a report detailing operational summary statistics (once operations have begun), implementation and operational issues encountered and actions taken to address them within the past month, and the identification of critical issues needing attention in the future.
 - **Deliverable 14: Updated Documentation of Test Results and Corrective Measures Taken**
- Present test results and corrective actions to MTC SAFE Project Manager.

Task 6 – Prepare and Implement Remote Agent

- Procure and configure equipment for remote agent
 - Contractor shall be responsible for purchasing equipment and related communications lines (DSL, fractional T1) for the remote agent link from the CAC to CHP GGCC (Vallejo). The remote monitor link should include all incidents identified for forwarding to these agencies in the past 24 hours, and should keep track of the time the message was sent over and when the message was opened by GGCC. A breakdown of which calls should be transferred to CHP live versus the CHP remote monitor is described in *Appendix A-2, Call Handling Matrix*.
 - **Deliverable 15: Installation of Remote Agent to GGCC**
- Develop call scripts for remote agent

- Contractor shall develop a set of call scripts for the Remote Agent that will guide call answering staff through the proper procedures for handling all varieties of call box calls.
- Develop training curriculum and associated materials for remote agent
 - Contractor shall develop training manuals and teaching curriculum appropriate to training and testing CAC call answering staff for the remote agent.
 - **Deliverable 16: Remote Agent Call Scripts and Training Materials**
- Develop, install, and test custom screens for remote agent
 - Contractor shall develop a set of custom computer screens with data entry screens, scripts, help screens, and other enhancements that will enable call box call answering data storage, communications with other call answering personnel (including two-way messaging), and report and voice log retrieval functions for the remote agent.
- Develop remote agent summary report
 - Contractor shall develop a summary report for MTC SAFE approval of remote agent and overall CAC operating statistics, operational issues encountered, and corrective actions taken.
 - **Deliverable 17: Remote Agent Summary Report**

PHASE II – CAC OPERATIONS

The implementation schedule for Task 7 is subject to the successful accomplishment of Contractor activities and service goals under Task 4 through 6. If MTC SAFE deems the Contractor has met the requirements of Phase I, the Contractor shall provide an updated implementation schedule that meets or precedes the July 1, 2016 transition date. If the Contractor has not completed Phase I, it shall proceed with each addition to service under Task 5 and Task 6 only with the approval of the MTC SAFE Project Manager.

There will be an on-going evaluation as part of the test and transition period (Tasks 4-6) when call box calls are being transferred from the existing Call Answering Center contractor (Keolis North America). The CAC will only be permitted to increase the percentage of calls handled with the approval of MTC SAFE.

MTC SAFE will be the manager of this project and will direct the efforts of the Contractor. The MTC SAFE Project Manager will also coordinate efforts being conducted at the existing CAC to transfer services to the new CAC during both the initial and ongoing phases of the program.

Task 7 – Continuing CAC Operations

- Continue operations and staffing activities
 - Contractor shall periodically revise and update operational and training documents (e.g. training manuals, policies and procedures manuals) on an as needed basis in reaction to changes made in operational procedures.
- Monitor program operations and implement any necessary corrective actions
- Attend SAFE meetings, as needed
- Bimonthly system tests
 - Contractor shall test all operational and backup CAC systems to ensure their proper functional health. Testing procedures shall be determined in cooperation with the Project Manager.
- Submit Report of Statistics Monthly
 - All reports must be able to be customized and reflect hourly, daily, weekly, and monthly calculations. Reports shall be submitted with monthly invoices; receipt of reports must precede issuance of payment. The following (subject to change) shall be included in the monthly reports:
 - Number of calls received per month broken down into type of incident, as detailed in *Appendix A-4, Sample Call Type Report*
 - Number of calls received, answered, and abandoned
 - Number of calls transferred to CHP, Caltrans, or other parties
 - Call answer delay for each call type
 - Average talk time and hold time
 - Calls made using the translation service provider
 - CAC staffing or occupancy by time interval
 - Explanation of the five longest calls and five longest call answer delay calls, as identified in the previous month's Blue Book (motorist assistance statistical handbook, available upon request).

- Contractor shall make Automatic Call Distributor (ACD) data available to MTC SAFE's data analyst for inclusion in MTC SAFE's Blue Book.
- Digital recordings of calls shall be kept on CD, DVD, or hard disk for a period of three years. All calls generated from the MTC SAFE shall be accessible via the remote monitor web page as described in Task 2 of which MTC SAFE's inspector shall select a minimum of 40 random calls for call auditing (for use in Level of Service rating). All calls shall be recorded, time stamped, and given a unique identification number that can be cross-referenced with other computer and paper data records and files, and the recordings available for download via the remote agent. All MTC SAFE records shall be kept confidential and separate from existing CAC records.
- **Deliverable 18: Monthly Report of Statistics and Availability of Recorded Calls for Inspection**
- Develop or Provide System Maintenance Schedule and Plan
 - Contractor shall establish a system maintenance schedule and plan that will ensure all equipment is kept in functioning order, as well as planned system and workstation upgrades to ensure call answering needs are met. The maintenance schedule and plan must be submitted to MTC SAFE for approval.
 - **Deliverable 19: Draft and Final System Maintenance Schedule and Plan**
- Develop or Provide Failure Notification Procedures
 - Should any portion of the CAC operations fail, Contractor must contact MTC SAFE within the timeframe set forth in the failure notification procedures. The procedures must be submitted to MTC SAFE for approval.
 - **Deliverable 20: Failure Notification Procedures**
- Submit Staff Training/Staff Changes Report Quarterly
 - Contractor shall submit reports and schedules of staff training and staff changes in the CAC on a quarterly basis.
 - **Deliverable 21: Quarterly Staff Training and Changes Report**

SCOPE OF WORK FOR REGIONAL SAFES

PHASE I - SET-UP AND IMPLEMENTATION OF CALL ANSWERING CENTER

Regional SAFE Task 1: Identify reporting needs and develop reporting mechanisms that meet monthly reporting requirements described in Regional SAFEs Task 2.

PHASE II: CAC OPERATIONS

Regional SAFE Task 2 – Continuing CAC Operations

- Continue operations and staffing activities
 - Contractor shall periodically revise and update operational and training documents (e.g. training manuals, policies and procedures manuals) on an as needed basis in reaction to changes made in operational procedures.
 - Updates to manuals should be provided to Regional SAFEs
- Monitor program operations and implement any necessary corrective actions
- Attend SAFE meetings, as needed
- Bi-monthly system tests
 - Contractor shall test all operational and backup CAC systems to ensure their proper functional health. Testing procedures shall be determined in cooperation with the Project Manager.
- Contractor shall prepare the following reports monthly and submit them with (or concurrent with) the monthly invoice for payment. Receipt of monthly reports shall precede payment:
 - A report including a complete list of calls completed each month, including call type, date, time, and call box number
 - A report which summarizes the monthly call statistics. The report must be able to be customized and reflect hourly, daily, weekly, and monthly calculations and reflect accurate call transfer and call type data. The report must include the following (list subject to change):
 - Number of calls received per month broken down into type of incident (i.e. Friends and Family, Rotational Tow, AAA, Accident, etc.)
 - Number of calls received, answered, and abandoned
 - Call answer delay for each call type
 - Average talk time and hold time
 - Calls made using the translation service provider
 - CAC staffing or occupancy by time interval
 - Explanation of the five longest calls and five longest call answer delay calls
 - Digital recordings of calls shall be kept on CD, DVD, or hard disk for a period of three years. All calls generated from the Regional SAFEs shall be accessible via the remote monitor web page of which the Regional SAFE Project Managers or their designated representative may review for call auditing purposes. All calls shall be recorded, time stamped, and given a unique identification number that can be cross-referenced with other computer and

paper data records and files, and the recordings available for download via the remote agent. All MTC SAFE records shall be kept confidential and separate from existing CAC records.

- **Regional SAFE Deliverable 1:** Detailed list of monthly calls, Monthly Statistical Report and Availability of Recorded Calls for Inspection
- Develop or Provide System Maintenance Schedule and Plan
 - Contractor shall establish a system maintenance schedule and plan that will ensure all equipment is kept in functioning order, as well as planned system and workstation upgrades to ensure call answering needs are met. The maintenance schedule and plan must be submitted to Regional SAFE for approval.
 - **Regional SAFE Deliverable 2:** System Maintenance Schedule and Plan
- Develop or Provide Failure Notification Procedures
 - Should any portion of the CAC operations fail, Contractor must contact Regional SAFE within the timeframe set forth in the failure notification procedures. The procedures must be submitted to Regional SAFE for approval.
 - **Regional SAFE Deliverable 3:** Failure Notification Procedures
- Submit Staff Training/Staff Changes Report Quarterly
 - Contractor shall submit reports and schedules of staff training and staff changes in the CAC on a quarterly basis.
 - **Regional SAFE Deliverable 4:** Quarterly Staff Training and Changes Report

The cost of call answering (Regional SAFE Task 2) shall be based on the call volume received from call boxes located in each Regional SAFE. The Regional SAFEs shall use the same Level of Service measures for penalties or bonuses as MTC SAFE, and may choose to extend the contract using the option period or opt out of using the future contract option period. Monthly invoices will be approved when accompanied by the monthly required reports consistent with the number of calls billed each month.

APPENDIX A-1: MINIMUM TECHNICAL REQUIREMENTS FOR CAC

At a minimum, the selected Contractor shall provide a CAC that meets the following technical requirements:

- An Automatic Call Distributor (ACD) capable of prioritizing call box calls as first priority, giving recorded announcements to calls on hold, and allowing real-time remote monitoring of calls;
- Digital Centrex, PBX, or T1 lines capable of handling at least six simultaneous incoming call box calls. These lines should be provisioned as “emergency” and “ground start” and also allow for multi-way and conference calling, automatic call back, caller identification, and speed dialing. Calls should be automatically routed to a backup center should the CAC or lines go down;
- Three power fail telephone lines to ensure a link is maintained between the CAC and CHP in the event of a power failure or emergency;
- Capability to report individual call statistics for each call received, including but not limited to answer delay time, call duration, and call classification (this data must be reported monthly in order to receive payment);
- Capability to record each call digitally in the form of file such as WAV, and match the recorded call to a specific call record entry in the database to facilitate easy retrieval;
- Operator screens that mimic CHP and other SAFE CAC screens that minimizes operator decisions and maximizes standardization across other SAFEs statewide;
- Workstations with a processor speed no less than 1.0 GHz with a minimum of 256 MB of RAM and 20 GB of hard disk space;
- Server(s) with a processor speed no less than 2.0 GHz with a minimum of 512 MB of RAM and 120 GB of hard disk space running at 7200 RPM, and the capability to burn CD-ROMs or DVD-ROMs for voice log archiving and transfer to MTC SAFE;
- Local Area Network connecting all workstations to the central server(s) at internal speeds of 100 Mbps;
- Emergency power back up system capable of supplying electricity to the entire CAC operation for four hours in the event of a power outage, including uninterruptible power supplies to supply electricity between the power failure and the backup system coming online;
- Access to technical support during normal business hours within 3 hours, or 8 hours outside of normal business hours. Technical support shall be able to troubleshoot and solve hardware, networking, database, and software issues effectively and in a timely manner, as approved by MTC SAFE.
- 24 hour Spanish translation services.

The selected Contractor will not be separately reimbursed for costs attributable to complying with these technical minimum requirements.

APPENDIX A-3: SAMPLE INCIDENT SCREEN DESIGN

CALL BOX ID#: ___ Sign#: ___ Box Ph#: _____ TBLOC: ___

Site Description: 1.1 MI / S OF THE TRUCK SCALES

Site Description 2: _____

Responsible Agency: CHP ___ FSP: N City: _____ Zip: _____

How may I help you? _____

If flat tire, do you have a spare?: _____ Incident Code: _____ I/C: _____

Is your car safely on the right shoulder?: _____

Do you have a Roadside SVC Organization?: _____ FSP: ___

First Name: _____ Last Name: _____ Solo Female?: _____

Vehicle Color / Yr / Make / Model: _____

I have the following company that services your area: _____

How many people are in your vehicle?: _____

Phone#: _____ Response: _____

Phone#: _____ Response: _____

Phone#: _____ Response: _____

DISPOSITION OF CALL: OTA PAY Meth: _____

CLLR H/U

020 Y

APPENDIX A-4: SAMPLE CALL TYPE REPORT***Call Type Report: MTC SAFE Calls Only******ALL CALLS******Between 3/1/2010 12:00 AM and 3/31/2010 11:59 PM***

<i>Call Description</i>	<i>Transfer Type</i>	<i>Calls</i>	<i>Percent</i>
<i>Accident</i>	<i>Live</i>	0	0.00%
<i>Medical</i>	<i>Live</i>	0	0.00%
<i>Crime</i>	<i>Live</i>	0	0.00%
<i>Road Hazard</i>	<i>Live</i>	0	0.00%
<i>Fire</i>	<i>Live</i>	0	0.00%
<i>Other</i>	<i>Live or RM</i>	1	0.19%
<i>Subtotal:</i>		1	0.19%
<i>Duplicate Event</i>	<i>RM</i>	0	0.00%
<i>FSP</i>	<i>Live</i>	0	0.00%
<i>Miscellaneous</i>	<i>Live or RM</i>	0	0.00%
<i>Call Box Check</i>	<i>RM</i>	153	29.59%
<i>Subtotal:</i>		153	29.59%
<i>Disable, Female Alone</i>	<i>Live or RM</i>	62	11.99%
<i>Disable, Male</i>	<i>RM</i>	204	39.46%
<i>Disable, Rot Tow Req</i>	<i>Live or RM</i>	0	0.00%
<i>Disable, No Help</i>	<i>Live or RM</i>	97	18.76%
<i>Subtotal:</i>		363	70.21%
<i>Test Calls</i>	<i>File</i>	0	0.00%
<i>Inappropriate Call</i>	<i>File</i>	0	0.00%
<i>Ghost Call</i>	<i>File</i>	0	0.00%
<i>Courtesy Call</i>	<i>File</i>	0	0.00%

APPENDIX A-6: REMOTE OPERATOR MONITORING EVALUATION FORMS

Duration of Call: _____
Call Box Number: _____
Operator's Initials: _____
Caller's Gender & Status (i.e., vehicle occupants, etc.): _____

Nature of Call: _____

Resolution:

- | | |
|--|---|
| <input type="checkbox"/> Emergency | <input type="checkbox"/> Friends/Family |
| <input type="checkbox"/> FSP | <input type="checkbox"/> Rotational Tow |
| <input type="checkbox"/> AAA | <input type="checkbox"/> No Help |
| <input type="checkbox"/> Other Auto Club | <input type="checkbox"/> Other (Please Specify) _____ |

Observations and Training Needs:

Call Rating:

1. **Call Greeting:**..... _____
1 point: uses greeting
2. **Admonishments (Safety Admonishments should be given before each and every time a caller is placed on hold.)**
 none used (0 point) given, but not at all proper points (1 points) used at all proper points (2 points)
3. **Knowledge of services** (one point each):..... _____
 complete accurate used proper procedure

Rating system: 0=below average; 1=average; 2=above average

4. **Operator's pleasantness and professionalism:**..... _____
5. **Operator's helpful demeanor:**..... _____

TOTAL SCORE (out of 10 points):..... _____

Additional Information:

Is the motorist fluent in English? (Y/N) _____
Was translation service used? (Y/N) _____

**MTC SAFE
CALL BOX CALL ANSWERING CENTER
511 FREEWAY ASSIST CALL QUALITY RATING FORM**

Duration of Call: _____
Operator's Initials: _____
Caller's Phone number (verified by operator): _____
Caller's Gender & Status (i.e., vehicle occupants, etc.): _____
Nature of Call: _____

Resolution:

- Emergency
- FSP
- AAA
- Other Auto Club
- Rotational Tow
- No Help
- Other (Please Specify) _____

Observations and Training Needs:

Call Rating:

1. **Call Greeting: Says "511 Freeway Assist"** _____
1 point: uses greeting

2. **Admonishments (Safety Admonishments should be given before each and every time a caller is placed on hold.)**
 none used (0 point) given, but not at all proper points (1 points) used at all proper points (2 points)

3. **Knowledge of services/location (one point each):** _____
 complete accurate used proper procedure

Rating system: 0=below average; 1=average; 2=above average

4. **Operator's pleasantness and professionalism:** _____
5. **Operator's helpful demeanor:** _____

TOTAL SCORE (out of 10 points): _____

Additional Information:

Is the motorist fluent in English? (Y/N) _____
Was translation service used? (Y/N) _____

APPENDIX A-7: 2014 MTC SAFE CALL BOX CALL VOLUME TREND

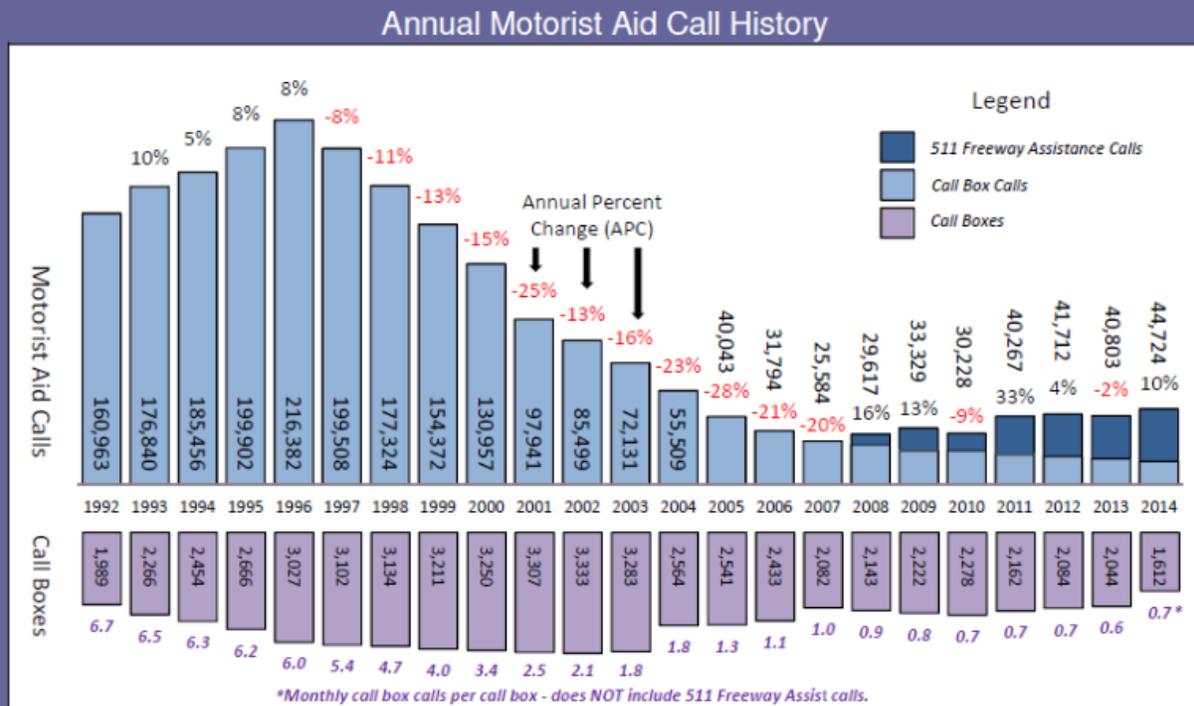
All Call Boxes 13,529 Calls	Highway Call Boxes 10,141 Calls	Bridge Call Boxes 3,388 Calls	511 Freeway Assist 31,195 Calls
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Motorist Assistance Calls			
Completed by	Answer Center	CHP*	Caltrans*
Highway Call Box Calls	90%	10%	1%
Bridge Call Box Calls	73%	2%	25%
Subtotal of fixed call box calls	86%	8%	7%
511 Freeway Assistance calls	93%	6%	1%
All Motorist Aid Calls	91%	7%	3%

*Completed by CHP or Caltrans includes calls transferred from the Answer Ctr and a small number of calls that were answered directly.

Motorist Aid Calls by Call Type			
Call Type	Call Boxes	511 Freeway Assistance	Combined
Car Club	4%	1%	2%
FSP / Rotation Tow	12%	10%	11%
CHP Emergency	10%	2%	5%
CHP Non-Emergency	37%	36%	36%
Caltrans / Golden Gate	0%	0%	0%
Other*	37%	51%	47%
TOTAL	100%	100%	100%

*The Other call type includes but is not limited to: test calls, inappropriate calls, ghost calls, wrong numbers.



APPENDIX B: PROPOSER MINIMUM QUALIFICATIONS**I. Proposer Minimum Qualifications**

Check box to indicate response.

<u>MINIMUM QUALIFICATIONS:</u>	Yes	No
Proposer has at least two years of experience fully implementing and operating a call answering center that can handle more than 3,000 motorist aid calls each month and provide Spanish language services.		

II. Signature of Authorizing Official:

Name of Proposing Company	
Address	
Phone Number	
Email Address	
Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date Signed	

APPENDIX B-1: PHASE I TASK BUDGET PROPOSAL FORM

Provide a task budget for Phase I that breaks down costs for each item listed below as it relates to the Scope of Work.

The following notes apply to the cost estimates for Phase I:

- All costs listed below should include overhead, burden, or other indirect costs in addition to labor costs, including both CAC staff and subcontracted services and capital costs for all equipment purchases used solely for MTC SAFE’s CAC operation and will become the assets of MTC SAFE.
- Please provide a brief explanation in the Notes column if cost of any tasks is \$0 or if any tasks have been accomplished

Task Description	Cost	Notes
Task 1: Planning and Design	\$	
Task 2: CAC Setup	\$	
Task 3: Operations Prep. and Setup	\$	
Task 4: CAC Test Operations	\$	
Task 5: CAC Operations Roll-Out	\$	
Task 6: Implement Remote Agent*	\$	
PHASE I TOTAL	\$	

* MTC SAFE’s share of remote agent setup only

Execution of this Form binds the Proposer to providing Phase I service, as described in this RFP.

Name of Proposer’s Company: _____

Representative Name and Title: _____

Authorized Signature: _____

APPENDIX B-2: PHASE II PRICE PER CALL PROPOSAL FORM

The payment for continuing operations (Phase II) will be compensated in two methods:

1) Call box calls will be based on a rate per call. Bonus payments for call box calls will be 3% of the base rate per call for each LOS measure exceeded. Penalty reductions will be 3% of the base rate per call for each LOS not met.

2) 511 Freeway Assist (**MTC SAFE only**) calls will be based on a connection fee plus a price per minute. Any 511 Freeway Assist calls exceeding ten minutes will be compensated solely on a flat rate of \$5.00. Phase II includes the following components and any others necessary to successfully operate the CAC that would be included in the price per call:

- Continue operations, staffing activities
- Submit report of statistics monthly
- Monitor program operations and implement any necessary corrective actions
- Attend monthly SAFE meetings, as needed
- Bi-monthly system tests
- Profit, overhead, burden, or other indirect costs.

Proposers shall provide one base cost estimate for price per call. The prices in the signed price proposal form will be used in all contracts resulting from this RFP.

1) Base Rate Per Call:	\$ _____
a) Bonus/Penalty: 3% of Base Rate per Call	+/- _____

MTC SAFE only

2) 511 Freeway Assist connection fee:	\$ _____
a) Price for each minute	\$ _____
b) Flat rate for calls exceeding ten minutes	<u>\$5.00</u>

Execution of this Form binds the Proposer to providing Phase II service, as described in this RFP, at the price per call specified for the actual call volume.

Name of Proposer's Company: _____

Representative Name and Title: _____

Authorized Signature: _____

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC SAFE’s commissioners include:

Alicia C. Aguirre	Federal D. Glover	Julie Pierce
Tom Azumbrado	Scott Haggerty	Bijan Sartipi
Jason Baker	Anne W. Halstead	Libby Schaaf
Tom Bates	Steve Kinsey	James P. Spering
David Campos	Sam Liccardo	Adrienne J. Tissier
Dave Cortese	Mark Luce	Scott Wiener
Dorene M. Giacopini	Jake Mackenzie	Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC SAFE commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC SAFE commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC SAFE from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC SAFE STANDARD CONTRACTOR CONTRACT

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION
SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS

and

NAME OF CONTRACTOR

for

CALL BOX CALL ANSWERING CENTER

FISCAL YEARS 2016-2017 to 2018-2019

PROFESSIONAL SERVICES AGREEMENT
Between
METROPOLITAN TRANSPORTATION COMMISSION
SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS
And **INSERT NAME OF CONTRACTOR**
For **CALL BOX CALL ANSWERING CENTER**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the **xx** day of **Month**, 20____, by and between the Metropolitan Transportation Commission Service Authority for Freeways and Expressways (herein called “MTC SAFE”), a local public agency established pursuant to Streets and Highways Code § 2550 *et seq.*, (herein called “CONTRACTOR”, a **partnership**, _____[state of incorporation] **corporation/nonprofit corporation/joint venture organized under the laws of the State of** _____.

RECITALS

WHEREAS, MTC SAFE intends to engage a Contractor to establish and operate a Call Box Call Answering Center (CAC) that will answer 100% of the voice and TTY calls generated by the MTC SAFE call box program, including 511 Freeway Assist calls (herein called the “Project”); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of MTC SAFE; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONTRACTOR will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

CONTRACTOR’s services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONTRACTOR agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by **Stephen Terrin**, (herein called “MTC SAFE Project Manager”). The MTC SAFE Project Manager is responsible for communication with CONTRACTOR and the administration of this Agreement. MTC’s Executive Director or

designated representative may substitute a new MTC SAFE Project Manager by written notice to CONTRACTOR.

CONTRACTOR's point of contact and the individual authorized to communicate to MTC SAFE on behalf of CONTRACTOR is **INSERT NAME OF CONTRACTOR'S PROJECT MANAGER** ("CONTRACTOR Project Manager"). A change in the CONTRACTOR Project Manager requires MTC's prior written approval.

In the performance of its services, CONTRACTOR represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors with special expertise in providing such services, and CONTRACTOR represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

1.1 PROGRESS REPORTS

CONTRACTOR shall provide MTC SAFE with **monthly** progress reports according to the schedule and form approved by the MTC SAFE Project Manager.

1.2 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the MTC SAFE Project Manager, CONTRACTOR shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subcontractors, subcontractor utilization, and if applicable, certified payrolls, to the MTC SAFE PROJECT MANAGER or his or her designee via a one or more web-based systems designated by MTC SAFE to which MTC SAFE will provide CONTRACTOR with system access. MTC SAFE may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

2. PERIOD OF PERFORMANCE

CONTRACTOR's services hereunder shall commence on or after _____, **20__**, and shall be completed no later than _____, **20__**, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. CONTRACTOR's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC SAFE will pay CONTRACTOR for its services as described in Attachment A, Scope of Work, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS** (\$_____)] ("Maximum Payment"). MTC SAFE shall make payments to CONTRACTOR in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to MTC SAFE at acctpay@mtc.ca.gov or in writing to:

Attention: Accounting Section
Metropolitan Transportation Commission
Service Authority for Freeways and Expressways
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Payment shall be made by MTC SAFE within thirty (30) days of receipt of an acceptable invoice, approved by the MTC SAFE Project Manager or a designated representative.

4. KEY PERSONNEL

The key personnel to be assigned to this work by CONTRACTOR and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the MTC SAFE Project Manager or a designee. CONTRACTOR shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Article 15.

CONTRACTOR agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC SAFE reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

MTC SAFE reserves the right to request changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONTRACTOR and specifically identified as amendments to the Agreement. The MTC SAFE Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. MTC SAFE may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONTRACTOR. Upon receipt of notice of termination, CONTRACTOR shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC SAFE. **CONTRACTOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed ___%, plus reasonable termination costs, not to exceed the amount payable for such deliverables.** If CONTRACTOR has any property in its possession belonging to MTC SAFE, CONTRACTOR will account for the same, and dispose of it in the manner MTC SAFE directs. Except as provided above, MTC SAFE shall not in any manner be liable for CONTRACTOR's actual or projected lost profits had CONTRACTOR completed the services required by this Agreement.

B. Termination for Default. If CONTRACTOR does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other material provision of the Agreement, MTC SAFE may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC SAFE may terminate the Agreement for default. In the event of such termination for default, CONTRACTOR will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: **CONTRACTOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables.** Such reimbursement will be offset by any costs incurred by MTC SAFE to complete work required under the Agreement. In no event shall MTC SAFE be required to reimburse CONTRACTOR for any costs incurred for work causing or contributing to the default. If CONTRACTOR has any property in its possession

belonging to MTC SAFE, CONTRACTOR will account for the same, and dispose of it in the manner MTC SAFE directs. MTC SAFE shall not in any manner be liable for CONTRACTOR's actual or projected lost profits had CONTRACTOR completed the services required by this Agreement.

C. If it is determined by MTC SAFE that CONTRACTOR's failure to perform resulted from unforeseeable causes beyond the control of CONTRACTOR, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONTRACTOR, MTC SAFE, after setting up a new delivery or performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to MTC SAFE, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

8. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee or agent of MTC SAFE and has no authority to contract or enter into any agreement in the name of MTC SAFE. CONTRACTOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR who are assisting in the performance of services under this Agreement. CONTRACTOR shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, CONTRACTOR shall indemnify, keep and hold harmless MTC SAFE and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("MTC SAFE Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONTRACTOR or its officers, employees, subContractors or agents or any of them, arising from, under or in connection with this Agreement; or

B. Any allegation that materials or services provided by CONTRACTOR under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONTRACTOR further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the MTC SAFE Indemnified Parties, CONTRACTOR shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY MTC SAFE

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("MTC SAFE Data") made available to CONTRACTOR by MTC SAFE for use by CONTRACTOR in the performance of its services under this Agreement shall remain the property of MTC SAFE and shall be returned to MTC SAFE at the completion or termination of this Agreement. No license to such MTC SAFE Data, outside of the Scope of Work of the Project, is conferred or implied by CONTRACTOR's use or possession of such MTC SAFE Data. Any updates, revisions, additions or enhancements to such MTC SAFE Data made by CONTRACTOR in the context of the Project shall be the property of MTC SAFE and subject to the provisions of Article 11.

10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONTRACTOR agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

MTC SAFE may be required to make available to CONTRACTOR certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between MTC SAFE and CONTRACTOR, Confidential Information shall remain the sole and exclusive property of MTC SAFE, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONTRACTOR; b) CONTRACTOR can demonstrate to have had rightfully in its possession prior to disclosure by MTC SAFE or its contractors, vendors or licensors; c) CONTRACTOR rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONTRACTOR agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by MTC SAFE. CONTRACTOR further agrees to disclose Confidential Information only to its directors, officers, employees and Contractors who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC SAFE, at any time and for any reason, CONTRACTOR shall destroy or return to MTC SAFE, at MTC’s option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC SAFE.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC SAFE by CONTRACTOR or its subContractors pursuant to this Agreement shall be and are the property of MTC SAFE. MTC SAFE shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of

CONTRACTOR or in the hands of any Subcontractor upon completion or termination of the work shall be immediately delivered to MTC SAFE. CONTRACTOR hereby assigns to MTC SAFE ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONTRACTOR also agrees to execute all papers necessary for MTC SAFE to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONTRACTOR'S pre-existing intellectual property secured, developed, written, or produced by CONTRACTOR prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONTRACTOR shall retain all right, title and interest in any such pre-existing intellectual property.

CONTRACTOR shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC SAFE, and CONTRACTOR shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC SAFE.

CONTRACTOR represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. SUBCONTRACTS

[FOR AGREEMENTS WITH SUBCONTRACTORS AT OUTSET]

A. SubContractors approved by MTC SAFE for subcontract work under this Agreement are listed in Attachment G, Subcontractor List, attached hereto and incorporated herein by this reference. Any subContractors must be engaged under written contract with CONTRACTOR with provisions allowing CONTRACTOR to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a Subcontractor to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONTRACTOR. Any substitution of subContractors listed in Attachment G must be approved in writing by MTC's Project Manager in advance of assigning work to a substitute Subcontractor.

[FOR AGREEMENTS WITH NO SUBCONTRACTORS AT OUTSET]

A. No subContractors are currently approved by MTC SAFE for work under this Agreement. In advance of the assignment of any work to a Subcontractor, such Subcontractor must be approved in writing by the MTC SAFE Project Manager and engaged under written contract with CONTRACTOR with provisions allowing CONTRACTOR to comply with all requirements of

[this Agreement](#), including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a Subcontractor to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONTRACTOR.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC SAFE and any subcontractors, and no subcontract shall relieve CONTRACTOR of his/her responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to MTC SAFE for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subcontractors is an independent obligation from MTC's obligation to make payments to CONTRACTOR.

C. Applicable provisions of this Agreement shall be included in any subcontract or Subcontractor agreement in excess of \$25,000 entered into under of this Agreement.

13. ASSIGNMENT OF AGREEMENT

CONTRACTOR shall not assign this Agreement, or any part hereof without prior express written consent of the MTC SAFE Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

14. RECORDS

CONTRACTOR agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONTRACTOR further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

15. AUDITS

CONTRACTOR shall permit MTC SAFE and MTC's authorized representatives to have access to CONTRACTOR's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONTRACTOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the Subcontractor agrees that MTC SAFE or any of MTC's

duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such Subcontractor for the term specified above.

16. NOTICES

Except for invoices submitted by CONTRACTOR pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC SAFE:	Attention: Stephen Terrin Metropolitan Transportation Commission 101 - 8th Street Oakland, CA 94607-4700 Email: sterrin@mtc.ca.gov Fax: (510) 817-5848
To CONTRACTOR:	Attention: Insert Name of Appropriate Person Contractor's name Contractor's address Contractor's address Email: X Fax: X

17. SOLICITATION OF CONTRACT

CONTRACTOR warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MTC SAFE shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONTRACTOR's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to MTC SAFE. CONTRACTOR further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of MTC SAFE, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONTRACTOR further covenants that it has made a complete disclosure to MTC SAFE of all facts of which CONTRACTOR is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC SAFE (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC SAFE.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONTRACTOR shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC SAFE; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONTRACTOR shall not engage the services of any Subcontractor or independent contractor on any work related to this Agreement if the Subcontractor or independent contractor, or any employee of the Subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONTRACTOR becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONTRACTOR shall immediately provide MTC SAFE with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONTRACTOR's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC SAFE becomes aware of an organizational conflict of interest in connection with CONTRACTOR's performance of the work hereunder, MTC SAFE shall similarly notify CONTRACTOR. In the event a conflict is presented, whether disclosed by CONTRACTOR or discovered by MTC SAFE, MTC SAFE will consider the conflict presented and any alternatives proposed and meet with CONTRACTOR

to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject CONTRACTOR to damages incurred by MTC SAFE in addressing organizational conflicts that arise out of work performed by CONTRACTOR, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

CONTRACTOR shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to MTC SAFE, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on MTC SAFE as a recipient of federal or state funds are hereby in turn imposed on CONTRACTOR.

20. CLAIMS OR DISPUTES

CONTRACTOR shall be solely responsible for providing timely written notice to MTC SAFE of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONTRACTOR claims before CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR's failure to provide timely notice shall constitute a waiver of CONTRACTOR's claims for additional compensation and/or time.

CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC SAFE, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC SAFE due written notice of a potential claim. The potential claim shall set forth the reasons for which CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to MTC SAFE prior to the time that CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC SAFE, and shall be governed by all applicable provisions of the Agreement. CONTRACTOR shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves CONTRACTOR's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to CONTRACTOR's claim, they may choose to pursue dispute

resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC SAFE may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event CONTRACTOR fails to comply with the requirements of the Agreement in any way, MTC SAFE reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTC SAFE or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

MTC SAFE, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC SAFE may deem necessary. The suspension may be due to the failure on the part of CONTRACTOR to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONTRACTOR. CONTRACTOR shall comply immediately with the written order of MTC SAFE to suspend the work wholly or in part. The suspended work shall be resumed when CONTRACTOR is provided with written direction from MTC SAFE to resume the work.

If the suspension is due to CONTRACTOR's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of CONTRACTOR, all costs shall be at CONTRACTOR's expense and no schedule extensions will be provided by MTC SAFE.

In the event of a suspension of the work, CONTRACTOR shall not be relieved of CONTRACTOR's responsibilities under this Agreement, except the obligations to perform the work that MTC SAFE has specifically directed CONTRACTOR to suspend under this section.

If the suspension is not the responsibility of CONTRACTOR, suspension of all or any portion of the work under this Section may entitle CONTRACTOR to compensation and/or schedule extensions subject to the Agreement requirements.

23. WARRANTY OF SERVICES

A. In the performance of its services, CONTRACTOR represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of Contractors with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

B. In the event that any services provided by CONTRACTOR hereunder are deficient because of CONTRACTOR's or a subContractor's failure to perform said services in accordance with the warranty standards set forth above, MTC SAFE shall report such deficiencies in writing to CONTRACTOR within a reasonable time. MTC SAFE thereafter shall have:

1. The right to have CONTRACTOR re-perform such services at CONTRACTOR's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from CONTRACTOR if within 30 days after written notice to CONTRACTOR requiring such re-performance, CONTRACTOR fails to give satisfactory evidence to MTC SAFE that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default.

CONTRACTOR shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONTRACTOR and MTC SAFE shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC SAFE provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the MTC SAFE Project Manager shall provide a written determination as to the dispute, including the basis for his or her decision. Upon CONTRACTOR's written acceptance of the MTC SAFE Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC SAFE may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the MTC SAFE Project Manager's determination.

If the MTC SAFE Project Manager's determination is not accepted by CONTRACTOR, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior

management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC SAFE and CONTRACTOR that cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONTRACTOR must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC SAFE, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONTRACTOR represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both CONTRACTOR and MTC SAFE. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION SERVICE AUTHORITY FOR
FREEWAYS AND EXPRESSWAYS

NAME OF CONTRACTOR

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A

Scope Of Work

Outline of Services

The services to be performed by CONTRACTOR shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the following:

- 1.
 - 2.
- ETC.

ATTACHMENT B
Project Schedule

Task #	Work to be Performed/Deliverables (#)	Completion Date
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

ATTACHMENT C
Compensation and Method of Payment

FIRM FIXED PRICE

A. Compensation. CONTRACTOR shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, Scope of Work, the firm fixed sum of _____ dollars (\$ _____), which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors' costs, travel, equipment, materials and supplies. Any amendments to this Agreement shall be based on the hourly rates set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. In no event shall the total compensation to be paid CONTRACTOR under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

A.1 PAYMENT FOR PHASE I

CONTRACTOR shall be compensated for the satisfactory completion of the work described in Attachment A, Phase I, in the lump sum amounts specified in this Attachment C, which include all applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, materials and supplies.

Task	<u>Deliverables (#)</u>	<u>Amount Due</u>
1	Do this (#1)	\$1,234
2	Do that (#2)	\$56,789
		0
	Excel is inside Word Tables. Highlight field, hit F9 or Table Formula = Format \$.	\$58,023.00
		highlight #, hit F9

A.2 PAYMENT FOR PHASE II

CONTRACTOR shall be compensated for its Work under Phase II on a price per call basis. There are two types of calls that form the basis of payment: call box calls and 511 Freeway Assist calls. Payment for call box calls is described in subarticle A below and for 511 Freeway Assist calls in subarticle B, The price paid by MTC SAFE for both types of calls shall be full

compensation for all work performed and services rendered under Phase II, including the costs and expenses of supervision, labor, indirect costs, subcontractors, travel, materials, supplies and equipment, taxes and profit.

A.2.1 Call Box Calls. MTC SAFE shall compensate CONTRACTOR for call box calls based on call volumes and level of service, as described in Table 1 below. This price per call rate is intended by the parties to apply to the complete term of Phase II operations for Call Box Calls.

A.2.2. 511 Freeway Assist. MTC SAFE shall compensate CONTRACTOR for 511 Freeway Assist calls on a price per minute basis as described in Table 1. This price per call rate and flat rate per call for 511 Freeway Assist calls shall apply to the complete term of Phase II operations.

Table 1: Payment for Phase II	
1) Base Rate Per Call:	\$ _____
a) Bonus/Penalty: 3% of Base Rate per Call	+/- _____
2) 511 Freeway Assist connection fee:	\$ _____
a) Price for each minute	\$ _____
b) Flat rate for calls exceeding ten minutes	<u>\$5.00</u>

A.3 LEVEL OF SERVICE ADJUSTMENTS FOR CALL BOX CALLS

1. Level of Service Criteria. The level of service criteria for call box calls occurring during Phase II are:

1. Percentage of calls answered in less than 20 seconds;
2. Percentage of calls answered in less than 90 seconds;
3. Average delay in answering calls;
4. Average delay in answering calls during peak periods;
5. Number of days 2-3% of calls were delayed by 2 minutes; and
6. Average call answering quality score.

The above level of service measures are quantified from only call box calls with the exception of level of service six, average call answering quality score which incorporates the quality scoring conducted by a MTC SAFE designated representative from call box calls as well as 511 Freeway Assist calls. The quality rating forms for call box calls and 511 Freeway Assist calls are included in this Agreement as Attachments C-1 and C-2, attached hereto and incorporated herein by this reference.

A.4. Adjustments in Baseline Price per Call Box Call. For each level of service measure mentioned in A.3 above, there are associated expected level of service ranges. The expected and bonus level of service measures, including the minimum and maximum cost per call, are set forth in Table 2 below:

Table 2- Adjustments					
	Level Of Service	Expected	Exceeds	Bonus	Reduction
1	Percentage of calls answered in less than 20 seconds			+ \$	- \$
2	Percentage of calls answered in less than 90 seconds			+ \$	- \$
3	Average delay in answering calls			+ \$	- \$
4	Average delay in answering calls during peak periods			+ \$	- \$
5	Number of days 2-3% of calls were delayed by 2 minutes			+ \$	- \$
6	Average call answering quality score			+	- \$
	Maximum Incentives / Penalty Per Call			+	- \$
	Base Price Per Call: \$_____			\$	\$

B. Method of Payment. Invoices for Phase I shall identify the project deliverable or milestone for which payment is sought and be submitted no later than thirty (30) days after MTC SAFE's acceptance of such deliverable/milestone.

Invoices for Phase II shall identify the calls for which payment is being requested by type (call box or 511 Freeway Assist), and shall be submitted within thirty (30) days after the end of each month for which payment is sought, covering work and services completed to the end of such month, not covered by previously submitted invoices. Each invoice shall be supported by statistical reports, as specified in Attachment A, Task 7, to substantiate the billing rates applied in the invoice, including (for call box calls) Level of Service measures exceeded or not met. Receipt

of such reports shall be a condition of payment of invoice. If applicable, CONTRACTOR's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F, Special Conditions Relating to Personally Identifiable Information.

ATTACHMENT D
Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E**Insurance and Financial Security (Bond) Provisions****1. INSURANCE**

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONTRACTOR's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONTRACTOR's insurance be primary without right of contribution from MTC SAFE. Prior to beginning work under this contract, CONTRACTOR shall provide MTC SAFE with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONTRACTOR and CONTRACTOR's officers, agents, and employees and with limits of

liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

MTC SAFE and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC SAFE and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by CONTRACTOR and any work performed or conducted by any subcontractor/Contractor working for or performing services on behalf of CONTRACTOR. No contract or agreement between CONTRACTOR and any subcontractor/Contractor shall relieve CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/Contractor working on behalf of CONTRACTOR on the project.

6. Property Insurance. Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC SAFE (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special

Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC SAFE, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

C. Self-Insurance. CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC SAFE.

D. Deductibles and Retentions. CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from MTC SAFE. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC SAFE seeks coverage as an additional insured under any CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONTRACTOR, Subcontractor, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR or Subcontractor is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONTRACTOR shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONTRACTOR shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONTRACTOR's personnel, subconsultants, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. CONTRACTOR must notify MTC SAFE if any of the above required coverages are non-renewed or cancelled. The failure to

procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONTRACTOR shall deliver to MTC SAFE Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

Not Applicable.

3. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as MTC SAFE Indemnified Parties, pursuant to Article 9 of the Agreement.

- Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE)
- California Highway Patrol (CHP)
- California Department of Transportation (Caltrans)

ATTACHMENT F**Special Conditions Relating to Personally Identifiable Information**

CONTRACTOR will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC SAFE or CONTRACTOR that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

CONTRACTOR shall permit MTC SAFE and its authorized representatives to audit and inspect: (i) CONTRACTOR’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) CONTRACTOR’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying CONTRACTOR’s compliance with this Agreement, and all applicable laws.

2. General Confidentiality of Data

All PII made available to or independently obtained by CONTRACTOR in connection with this Agreement shall be protected by CONTRACTOR from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to MTC SAFE. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

CONTRACTOR agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

CONTRACTOR is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONTRACTOR agrees to retain PII for no longer than completion date of the Agreement. At the conclusion of this retention period, CONTRACTOR agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). CONTRACTOR agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONTRACTOR also agrees to use DoD approved methods to sanitize any Storage Media prior to

discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, CONTRACTOR shall submit a certification to the MTC SAFE Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of Attachment F, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

3. Compliance with Statutes and Regulations

CONTRACTOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*). In addition, CONTRACTOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC SAFE relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC SAFE against any loss, cost, damage or liability by reason of CONTRACTOR’s violation of this provision.

4. Subcontractors

MTC SAFE’s approval in writing is required prior to any disclosure by CONTRACTOR of PII to a Subcontractor or prior to any work being done by a Subcontractor that entails receipt of PII. Once approved, CONTRACTOR agrees to require such Subcontractor to sign an agreement in substantially identical terms as this attachment, binding the Subcontractor to comply with its provisions.

5. Contractor Guarantees

CONTRACTOR shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII that becomes known to it during the term of this Agreement.

CONTRACTOR shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to MTC SAFE.

CONTRACTOR shall comply, and shall cause its employees, representatives, agents, subconsultants and subcontractors to comply, with such directions as MTC SAFE may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC SAFE, CONTRACTOR shall sign an information security and confidentiality agreement provided by MTC SAFE and attest that its employees, representatives, agents, subconsultants and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with CONTRACTOR substantially the same in its terms.

6. Notice of Security Breach

CONTRACTOR shall immediately notify MTC SAFE when it discovers that there may have been a breach in security that has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The MTC SAFE contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

ATTACHMENT G
Subcontractor List

	<u>Name/Address of Subcontractor</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Contractor shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under its Agreement with MTC SAFE, placed with insurers with a Best's rating of A-VIII or better.

Yes (√)	<p>Please certify by checking the box below that required coverages will be provided within ten (10) business days of MTC SAFE's notice to firm that it wishes to contract with the firm.</p>
—	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer's Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE. Such <u>Workers Compensation & Employer's Liability</u> may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR's officers, agents, and employees and with limits of liability that shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE.</p> <p>MTC SAFE and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.</p>
—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC SAFE and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.</p> <p>The policy shall provide coverage for all work performed by CONTRACTOR and any work performed or conducted by any subcontractor/Contractor working for or performing services on behalf of CONTRACTOR. No contract or agreement between</p>

	<p>CONTRACTOR and any subcontractor/Contractor shall relieve CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/Contractor working on behalf of CONTRACTOR on the project.</p>
<p>_____</p>	<p><u>Umbrella Insurance</u> in the amount of \$2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
<p>_____</p>	<p><u>Property Insurance.</u> Property Insurance covering CONTRACTOR 'S own business personal property and equipment to be used in performance of its Agreement with MTC SAFE, materials or property to be purchased and/or installed on behalf of MTC SAFE (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC SAFE.</p>
<p>Contractor's obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC SAFE.</p> <p>Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from MTC SAFE. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC SAFE seeks coverage as an additional insured under any Contractor insurance policy that contains a deductible or self-insured retention, Contractor shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Contractor, subcontractor, subcontractor, or any of their employees, officers or directors, even if Contractor or subcontractor is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Contractor shall:</p> <ol style="list-style-type: none"> 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC SAFE or the beginning of any work under such Agreement; 2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Contractor shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work. 	

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Contractor's personnel, subcontractors, and equipment have been removed from MTC SAFE's property, and the work or services have been formally accepted. Contractor must notify MTC SAFE if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with MTC SAFE.

Prior to commencement of any work hereunder, Contractor shall deliver to MTC SAFE Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of its Agreement with MTC SAFE.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) business days of MTC SAFE's notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC SAFE's attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to MTC SAFE's attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.

APPENDIX E, MONTEREY COUNTY SAFE STANDARD CONTRACT

TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
AGREEMENT FOR PROFESSIONAL SERVICES
APPROVED BY THE TAMC BOARD ON:
[Rates of Compensation]

This is an agreement between the Transportation Agency for Monterey County, hereinafter called "TAMC," and [Consultant's Name], a [indicate legal status of entity, e.g., a California corporation, an individual dba . . ., a California partnership], [Consultant's address], hereinafter called "Consultant."

The parties agree as follows:

1. Employment of Consultant. TAMC hereby engages Consultant and Consultant hereby agrees to perform the services set forth in Exhibit A, in conformity with the terms of this Agreement. Consultant will complete all work in accordance with the work schedule set forth in Exhibit A.

(a) The work is generally described as follows:

[INSERT BRIEF DESCRIPTION]

(b) Consultant represents that Consultant and its agents, subcontractors and employees performing work hereunder are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required by this Agreement.

(c) Consultant, its agents, subcontractors, and employees, shall perform all work in a safe, skillful, and professional manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements. Consultant shall ensure for itself and for any subcontractors under this Agreement that the applicable requirements of Labor Code section 1725.5, concerning the registration of contractors for public works, shall be in force and maintained for the term of this Agreement.

(d) Consultant shall furnish, at its own expense, all materials and equipment necessary to carry out the terms of this Agreement, except as otherwise provided herein. Consultant shall not use TAMC premises, property (including equipment,

instruments, or supplies) or personnel for any purpose other than in the performance of its obligations hereunder.

- (e) Consultant's project manager shall be the person specified in Exhibit A. If Consultant desires to change the project manager, Consultant shall get written approval from TAMC of the new project manager.
 - (f) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
 - (g) Consultant's Project Manager shall meet with TAMC's Contract Administrator, as needed, to discuss progress on the contract.
2. Term of Agreement. The term of this Agreement shall begin upon [DATE], contingent upon approval by the TAMC Board, and Consultant shall commence work only after a Notice to Proceed has been issued by TAMC's Project Manager specified in Paragraph 33. Unless earlier terminated as provided herein, this Agreement shall remain in force until [DATE]. Consultant acknowledges that this Agreement is not binding until it is fully executed and approved by TAMC.
3. Payments to Consultant; maximum liability. Subject to the limitations set forth herein, TAMC shall pay to Consultant the amounts provided in Exhibit B: Budget, upon receipt and acceptance of deliverables listed therein. Each payment by TAMC shall be for a specific deliverable outlined in Exhibit A: Scope of Work and Schedule. The maximum amount payable to the Consultant under this Agreement is set forth in Exhibit B: Budget and shall not exceed the amount of _____ Dollars (\$XXXX). If there is any conflict between the terms of this Agreement and the terms of either Exhibit A (Scope of Work) or Exhibit B (Budget), the terms of this Agreement shall prevail. TAMC does not guarantee any minimum amount of dollars to be spent under this Agreement.
4. Method of Payment/Allowable Costs and Payment. The method of payment for this Agreement will be based upon specific rates of compensation.
- (a) Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's approved Cost Proposal, Exhibit B to this Agreement, which rates shall be inclusive of direct salary costs, employee benefits, overhead and fees, if any.

These rates are not adjustable for the performance period set forth in this Agreement.

- (b) In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the Cost Proposal and in the executed Task Order.
- (c) Work on specific projects shall be directed via Task Orders.
- (d) Once a specific project to be performed under this Agreement is identified by TAMC, TAMC's Project Manager will prepare a draft Task Order less the cost estimate. The draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and a TAMC Task Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days, along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee (if any), and a total dollar amount for the Task. After agreement has been reached on the negotiable items and total not to exceed cost, a finalized Task Order with the finalized Task Order Budget shall be signed by both TAMC and Consultant.
- (e) If no agreement on the Task Order is reached within a reasonable amount of time, TAMC may present the draft Task Order to a different consultant with which TAMC has an agreement, or may take such other actions as TAMC deems appropriate to accomplish the Task.
- (f) Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.
- (g) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- (h) When milestone cost estimates are included in the approved Cost Estimate, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- (i) Progress payments for each Task Order will be made monthly in arrears, based on services provided and actual costs incurred.
- (j) Consultant shall not commence performance of work or services until this Agreement has been approved by TAMC, and notification to proceed has been issued

by TAMC's Contract Administrator. No payment will be made prior to approval, or for any work performed prior to approval of this Agreement.

- (k) A Task Order is of no force or effect until returned to TAMC and signed by an authorized representative of TAMC. No expenditures are authorized on a project or task, and work shall not commence until a Task Order for that project/task has been executed by TAMC.
- (l) Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by TAMC's Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title and Task Order number. Credits due TAMC that include any equipment purchased under the provisions of Paragraph 26 (Equipment, Supplies or Consultant Services Purchases) must be reimbursed by Consultant prior to the expiration or termination of this Agreement.
- (m) The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to TAMC's Contract Administrator at the address contained in Paragraph 34 (Notices).
- (n) The period of performance for Task Orders shall be in accordance with the dates specified in the Task Order. No Task Order will be written which extends beyond the expiration of this Agreement.
- (o) The total amount payable by TAMC for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by a written amendment.
- (p) If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- (q) Task Orders may not be used to amend this Agreement and may not exceed the scope of work, or the term, of this Agreement.
- (r) The total amount payable by TAMC under all Task Orders resulting from this Agreement shall not exceed the amount of _____

(\$XXXXXX). It is understood and agreed that there is no guarantee, either expressed or implied, that this dollar amount will be authorized under this Agreement through Task Orders.

- (s) All subcontracts under this Agreement in excess of \$25,000 shall contain the above provisions.

5. Retention of Funds.

- (a) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- (b) No retainage will be withheld by TAMC from progress payments due the prime Consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

6. Termination.

- (a) TAMC reserves the right to terminate this Agreement upon thirty (30) calendar days' written notice to Consultant with the reasons for termination stated in the notice.
- (b) TAMC may also terminate this Agreement at any time for good cause effective immediately upon written notice to Consultant. "Good cause" includes, without limitation, the failure of Consultant to perform the required services at the time and in the manner provided herein, as well as failure to comply with the provisions of Paragraphs 12 and 13, relating to audits, below. Notwithstanding TAMC's right to terminate for good cause effective immediately upon written notice thereof, TAMC

shall provide prior notice to Consultant of any ground for termination then being considered, and also provide Consultant with a good faith opportunity to avoid termination, as reasonably determined by TAMC in its absolute discretion. If TAMC terminates this Agreement for good cause, TAMC may be relieved of the payment of any consideration to Consultant, and TAMC may proceed with the work in any manner, which it deems proper. Costs incurred by TAMC thereby shall be deducted from any sum otherwise due Consultant.

- (c) The maximum amount for which TAMC shall be liable if this Agreement is terminated is zero (0) dollars.
- (d) It is also mutually understood between TAMC and Consultant that this Agreement may have been written before ascertaining the availability of funds, or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to TAMC for the purpose of this Agreement. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds. TAMC retains the right to direct Consultant immediately to stop work and to terminate this Agreement for convenience, pursuant to Paragraph 6(a) above, in order to address any reduction of funds.
- (e) Termination of this Agreement shall not terminate Consultant's duty to defend, indemnify and hold harmless TAMC, as provided in Paragraphs 8 and 20.

7. Cost Principles and Administrative Requirements.

- (a) Consultant agrees that the contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR), Chapter 1, Part 31.000 *et seq.*, Federal Acquisition Regulations System, shall be used to determine the cost allowability of individual items.
- (b) Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 1201, Uniform System of Accounts, List of Instructions and Accounts, Regulations Prescribed.
- (c) Any costs for which payment has been made to Consultant under this Agreement that are determined by subsequent audit to be unallowable under 49 CFR Part 1201 and 48 CFR Part 31, are subject to repayment by Consultant to TAMC.

(d) All subcontracts in excess of \$25,000 shall contain the above provisions.

8. Indemnification.

To the fullest extent permitted by law, including California Civil Code sections 2782 and 2782.6, Consultant shall defend (with legal counsel reasonably acceptable to TAMC), indemnify and hold harmless TAMC, its officers, agents, and employees, from and against any and all claims, losses, costs, damages, injuries (including injury to or death of an employee of Consultant or its subcontractors), expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify TAMC, its officers, agents, and employees, shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of TAMC, its officers, agents, and employees. To the extent there is an obligation to indemnify under this Paragraph, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct. Notwithstanding any other provision of this Agreement, Consultant's obligation to defend, indemnify and hold harmless TAMC shall survive the termination or expiration of the Agreement for a term to include the applicable statute of limitations related to the Consultant's performance pursuant to the Agreement.

9. Insurance.

(a) Without limiting Consultant's duty to indemnify as set forth in this Agreement, Consultant shall maintain, at no additional cost to TAMC, throughout the term of this Agreement a policy or policies of insurance with the following coverage and minimum limits of liability (check if applicable):

- Commercial general liability insurance, including but not limited to premises, personal injury, products, and completed operations, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.
- Professional liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims made" basis rather than an "occurrence" basis, Consultant shall, upon the

expiration or termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the surviving term of Consultant’s obligation to defend, indemnify and hold harmless TAMC as set for in Paragraph 8.

- Comprehensive automobile insurance covering all motor vehicles, including owned, leased, hired and non-owned vehicles used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
 - (b) All insurance required under this Agreement shall be with a company acceptable to TAMC and authorized by law to transact insurance business in the State of California. Unless otherwise provided in this Agreement, all such insurance shall be written on an occurrence basis; or, if any policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of two years following the date of Consultant’s completion of performance hereunder.
 - (c) Each policy of insurance required under this Agreement shall provide that TAMC shall be given written notice at least thirty days in advance of any change, cancellation or non-renewal thereof. Each policy shall provide identical coverage for each subcontractor performing work under this Agreement, or be accompanied by a certificate of insurance for each subcontractor showing identical insurance coverage.
 - (d) Commercial general liability and automobile liability policies shall provide an endorsement naming TAMC, its officers, agents, and employees, as additional insureds and shall further provide that such insurance is primary to any insurance or self-insurance maintained by TAMC, and that no insurance of any additional insured shall be called upon to contribute to a loss covered by Consultant’s insurance.
 - (e) TAMC shall not be responsible for any premiums or assessments on the policy.
10. Workers’ Compensation Insurance. If during the performance of this Agreement, Consultant employs one or more employees, then Consultant shall maintain a workers’ compensation plan covering all of its employees as required by Labor Code Sec. 3700, either (a) through workers’ compensation insurance issued by an insurance company, with coverage meeting the statutory limits and with a minimum of One Million Dollars (\$1,000,000) per occurrence for employer’s liability, or (b) through a plan of self-insurance certified by the State Director of

Industrial Relations, with equivalent coverage. If Consultant elects to be self-insured, the certificate of insurance otherwise required by this Agreement shall be replaced with consent to self-insure issued by the State Director of Industrial Relations. The provisions of this paragraph apply to any subcontractor employing one or more employees, and Consultant shall be responsible for all subcontractors' compliance herewith.

11. Safety Provisions.

- (a) Consultant shall comply with Division of Occupational Safety and Health (CAL-OSHA) regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by TAMC Safety Officer and other TAMC representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on a construction project site.
- (b) If applicable to work to be performed by Consultant identified in the Scope of Work (Exhibit A), and pursuant to the authority contained in Section 591 of the Vehicle Code, TAMC has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- (c) Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Section.
- (d) Consultant must have a CAL-OSHA permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

12. Certificate of Insurance and Taxpayer Identification. Prior to the execution of this Agreement by TAMC, Consultant shall submit a completed federal W-9 form, Request for Taxpayer Identification Number and Certification, and file certificates of insurance with TAMC's contract administrator evidencing that Consultant has in effect the insurance required by this Agreement. Consultant shall file a new or amended certificate promptly after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify any indemnification provision of this Agreement.

13. Retention of Records/Audit. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7, Consultant, subconsultants, and TAMC shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, TAMC, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

14. Audit Review Procedures.

- a) Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by TAMC'S Chief Financial Officer.
- b) Not later than 30 days after issuance of the final audit report, Consultant may request a review by TAMC'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- c) Neither the pendency of a dispute nor its consideration by TAMC will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater)

- d) Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by TAMC contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by TAMC at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a

breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

(An additional AUDIT CLAUSE must be inserted into all contracts of \$3,500,000 or greater; confer with legal counsel for language.)

15. Inspection of Work. Consultant and any subconsultant shall permit TAMC, the State, and the FHWA (if federal participating funds are used in this Agreement) to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.
16. Confidentiality; Return of Records. Consultant and its officers, employees, agents, and subcontractors shall comply with all federal, State and local laws providing for the confidentiality of records and other information. Consultant shall not disclose any confidential information received from TAMC or prepared in connection with the performance of this Agreement without the express permission of TAMC. Consultant shall promptly transmit to TAMC all requests for disclosure of any such confidential information. Consultant shall not use any confidential information gained through the performance of this Agreement except for the purpose of carrying out Consultant's obligations hereunder. When this Agreement expires or terminates, Consultant shall return to TAMC all records, which Consultant utilized or received from TAMC to perform services under this Agreement.
17. Amendments and Modifications. No modification or amendment of this Agreement shall be valid unless it is set forth in writing and executed by the parties hereto.
18. Statement of Compliance/Non-Discrimination.
 - a) Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
 - b) During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable

regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

[If federal funding, add c) and d)]

- c) Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
 - d) Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.
19. Harassment. TAMC maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a TAMC employee's work performance or creates an intimidating, hostile or offensive work environment.
20. Independent Contractor. In its performance under this Agreement, Consultant is at all times acting and performing as an independent contractor and not as an employee of TAMC or any of its member jurisdictions. No offer or obligation of employment is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive any form of benefits accorded to employees including without limitation leave time, health insurance, workers' compensation coverage, disability benefits, and retirement contributions. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including without limitation federal and State income taxes and social security arising out of Consultant's performance of this Agreement. In connection therewith, Consultant shall defend, indemnify,

and hold harmless TAMC from any and all liability, which TAMC may incur because of Consultant's failure to make such payments.

21. Delegation of Duties; Subcontracting.

- a) Nothing contained in this Agreement or otherwise, shall create any contractual relation between TAMC and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to TAMC for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from TAMC'S obligation to make payments to the Consultant.
- b) Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by TAMC's Contract Administrator, except that, which is expressly identified in the approved Budget/Cost Proposal.
- c) Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by TAMC.
- d) Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- e) Any substitution of subconsultant(s) must be approved in writing by TAMC's Contract Administrator prior to the start of work by the subconsultant(s).

22. Ownership of Data.

- a) Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will automatically be vested in TAMC; and no further agreement will be necessary to transfer ownership to TAMC. Consultant shall furnish TAMC all necessary copies of data needed to complete the review and approval process.
- b) It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the connection with the project for which this Agreement has been entered into.
- c) Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by TAMC of the machine-readable information and data provided by Consultant under this Agreement; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by TAMC of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by Consultant.

- d) Applicable patent rights provisions regarding rights to inventions shall be included in the Agreements as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- e) TAMC may permit copywriting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the data, and may authorize others to use the work for government purposes.
- f) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

23. Confidentiality of Data.

- a) All financial, statistical, personal, technical, or other data and information relative to TAMC's operations, which are designated confidential by TAMC and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.
- b) Permission to disclose information on one occasion, or public hearing held by TAMC relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- c) Consultant shall not comment publicly to the press or any other media regarding the Agreement or TAMC's actions on the same, except to TAMC's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.
- d) Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by TAMC, and receipt of TAMC'S written permission.
- e) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

24. Compliance with Terms of Federal or State Grant. If any part of this Agreement has been or will be funded pursuant to a grant from the federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant's work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.

25. Prevailing Wages.

- a) Consultant shall comply with the all prevailing wage requirements, including California Labor Code section 1770, et seq., and any Federal or local laws or ordinances, that may be applicable to the work to be performed pursuant to this Agreement.
- b) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works, shall contain all the provisions of this Paragraph 25.
- c) When prevailing wages may apply to the services described in the Scope of Work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination found on the DIR website.

26. Equipment, Supplies or Consultant Services Purchases.

- (a) Prior authorization in writing by TAMC's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars (\$5,000) for supplies, equipment, or unbudgeted Consultant services. Consultant shall provide an evaluation of desirability of incurring such costs.
- (b) For purchase of any items, service or consulting work not covered in Consultant's Cost Proposal and exceeding Five Thousand Dollars (\$5,000), prior authorization is required by TAMC's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

- (c) Any equipment purchased as a result of this Agreement is subject to the following:
- i. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of Five Thousand Dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, TAMC shall receive a proper refund or credit for such equipment at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit TAMC in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established TAMC procedures for such sales and then credit TAMC in an amount equal to that sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from and appraiser mutually acceptable to TAMC and Consultant; if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by TAMC.
 - ii. Consultant acknowledges that, if federal funds are used in this Agreement, 49 CFR, Part 1201 requires a credit to Federal funds when participating equipment with a fair market value greater than Five Thousand Dollars (\$5,000) is credited to the project for which this Agreement was entered into.
- (d) Consultant shall include these provisions into any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000).

27. Conflict of Interest.

- (a) Consultant shall disclose any financial, business, or other relationship with TAMC that may have an impact upon the outcome of this Agreement, or any ensuing TAMC construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing TAMC construction project, which will follow.
- (b) Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- (c) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

28. Governing Laws. This Agreement shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Monterey shall be the proper venue for any dispute arising hereunder.
29. Construction of Agreement. The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any exhibit or amendment. To that end, it is understood and agreed that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654. Section and paragraph headings appearing herein are for convenience only and shall not be used to interpret the terms of this Agreement.
30. Waiver. Any waiver of any term or condition hereof must be in writing. No such waiver shall be construed as a waiver of any other term or condition herein.
31. Successors and Assigns. This Agreement and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and heirs.
32. Time is of the Essence. The parties mutually acknowledge and agree that time is of the essence with respect to every provision hereof in which time is an element. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act, nor shall any such extension create a precedent for any further or future extension.
33. Contract Administrators. Consultant's designated principal responsible for administering Consultant's work under this Agreement shall be [NAME], Project Manager; TAMC's designated administrator of this Agreement shall be Debra L. Hale, Executive Director. TAMC's Project Manager under this Agreement shall be [NAME].

34. Notices. Notices required under this Agreement shall be delivered personally or by electronic facsimile, or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery or facsimile transmission, or on the third day after deposit with the U.S. Postal Service. Consultant shall give TAMC prompt notice of any change of address. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

To TAMC:	Debra L. Hale	To Consultant:
	Executive Director	
	55-B Plaza Circle	
	Salinas, CA 93901	
Tel:	831-775-0903	Tel:
Fax:	831-775-0897	Fax:
Email:	debbie@tamcmonterey.org	Email:

35. Non-exclusive Agreement. This Agreement is non-exclusive and both parties reserve the right to contract with other entities for the same or similar services.

36. Execution of Agreement. Any individual executing this Agreement on behalf of an entity represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and to bind the entity to the terms and conditions hereof. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

37. Debarment and Suspension Certification.

- (a) Consultant's signature affixed below shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (nonprocurement)," which certifies that Consultant or any person associated with Consultant in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by an federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the TAMC.
- (b) Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

(c) Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

38. Rebates, Kickbacks or Other Unlawful Consideration Prohibited. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any TAMC employee. TAMC shall have the right, in its sole and absolute discretion to do any of the following for breach or violation of this warranty: to terminate the Agreement without liability; to pay for the value of the work actually performed; or to deduct from the compensation to be paid under this Agreement (or otherwise recover) the full amount of any such rebate, kickback or unlawful consideration.

39. Prohibition of Expending Local Agency, State or Federal Funds for Lobbying.

- (a) Consultant certifies to the best of his, her or its knowledge and belief that:
- i. No State, Federal or local agency appropriated funds have been paid, or will be paid, by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a member of the State Legislature or United States Congress; an officer or employee of the State Legislature or United States Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any State or Federal contract; in connection with the making of any State or Federal grant; in connection with the making of any State or Federal loan; in connection with the entering into of any cooperative agreement, and in connection with the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan or cooperative agreement.
 - ii. If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress; or an employee of a Member of Congress, in connection with this contract, grant, loan or cooperative agreement, then Consultant shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Consultant acknowledges that any person who fails to file the required certification shall be subject to a civil penalty of not

less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$100,000) for such failure.

- (c) By signing this Agreement, Consultant also agrees that Consultant will require that the language of this certification will be included in all lower-tier subcontracts which exceed One Hundred Thousand Dollars (\$100,000), and that all recipients of such subcontracts shall certify and disclose accordingly.

40. Exhibits. The following Exhibits are attached hereto and incorporated by reference:

Exhibit A – Scope of Work and Work Schedule

Exhibit B – Budget/Approved Consultant’s Cost Proposal

41. Entire Agreement. This document, including all exhibits hereto, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral negotiations and representations between the parties concerning all matters relating to the subject of this Agreement.

IN WITNESS WHEREOF, TAMC and Consultant execute this agreement as follows:

TAMC

CONTRACTOR

By _____
Debra L. Hale
Executive Director

By: _____
Name:
Title:

Dated: _____

Dated: _____

By: _____
Name:
Title:

Dated: _____

INSTRUCTIONS: If Consultant is a corporation (including limited liability and nonprofit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If Consultant is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If Consultant is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

Approved as to form:

TAMC Counsel

Dated: _____

For TAMC internal use:

Work Element number to be used for the contract: _____

APPENDIX F, SANTA CRUZ COUNTY SAFE STANDARD CONTRACT

Sample Contract

Contract No. _____

PROFESSIONAL SERVICES or INDEPENDENT CONSULTANT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of (Month), 20__ by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and (Company name), hereinafter called CONSULTANT for (services/project name). The parties agree as follows:

1. DUTIES.

- A. CONSULTANT agrees to exercise special skill to accomplish the following results: (services/project name and location-if applicable), as specified in Exhibit A: Scope of Services, which by this reference is incorporated herein.
- B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

<u>Name</u>	<u>Firm</u>	<u>Function</u>
		Principal in Charge
		Project Manager
- C. No person named in paragraph B of this Section, or his or her successor, shall be removed or replaced by CONSULTANT, nor shall his or her agreed-upon function hereunder be changed, without the prior written consent of COMMISSION. Such consent shall not be unreasonably withheld.
- D. CONSULTANT’S PROGRESS REPORTS AND/OR MEETINGS
 - 1) CONSULTANT shall perform the services in accordance with the Project Schedule attached hereto (Exhibit B) and incorporated by reference. The CONSULTANT shall submit written progress reports with each invoice. The report should be sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
 - 2) The CONSULTANT’s Project Manager shall meet with the COMMISSION’s Contract Manager, as needed, to discuss progress on the contract.

2. COMPENSATION. *(Fed grants: See LAPM Exhibit 10-H re: Method of Payment for more info)*

In consideration for CONSULTANT accomplishing work to be performed under this contract (as described in Exhibit A: Scope of Services and Exhibit B: Project Schedule), COMMISSION shall compensate CONSULTANT in accordance with the approved Fee Schedule, dated DATE, attached hereto (Exhibit C) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence. COMMISSION agrees to pay CONSULTANT as follows:

For non-Fed funded contracts:

- A. Total payment is not to exceed: *(choose one of following 1-4)*

1. \$_____ for time and materials at the rates and conditions set forth in Exhibit B: Fee Schedule, which by this reference is incorporated herein.
 2. \$_____ for time and materials at an hourly rate of \$_____ and at actual cost for materials and reimbursable expenses.
 3. \$_____, processed for payment in full after project completion, receipt of invoice, and approval of project manager.
 4. \$_____. The basis of payment for the services provided under this Agreement shall be based on actual cost-plus-a-fixed fee.
 - a. The COMMISSION shall reimburse the CONSULTANT for actual costs (including labor costs, subcontracts) incurred by the CONSULTANT in performance of the work, in an amount not to exceed \$_____ exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the approved CONSULTANT'S Cost Proposal (Exhibit B: Fee Schedule).
 - b. In addition to the allowable incurred costs referred to in Section 2.A of this Agreement, the COMMISSION shall pay the CONSULTANT a fixed fee of \$_____. Said fixed fee shall not be altered for the term of the Agreement, unless the parties amend the Agreement to reflect a significant alteration in the scope, complexity, or character of the work to be performed.
- B. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the overhead rate set forth in the Fee Schedule.
- C. Transportation and subsistence expenses claimed for reimbursement shall not exceed the rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules or to employees under current U.S. General Service Administration rules.
- D. Reimbursable expenses will be billed and processed for payment upon approval of the Contract Manager.
- E. Progress payments will be made no less than monthly (*or quarterly*) in arrears based on satisfactory services provided and actual allowable incurred costs. A pro rata portion of the CONSULTANT's fixed fee, if applicable, will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, the COMMISSION may delay payment and/or terminate this Agreement in accordance with the provisions of Section 4 of this Agreement.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- G. CONSULTANT shall not exceed milestone cost estimates as shown in Exhibit B, except with the prior written approval of the Contract Manager.
- H. The CONSULTANT will be reimbursed after receipt by the COMMISSION's Contract Manager of itemized invoices. Invoices shall be submitted no later than 45calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall be mailed to the COMMISSION's Contract Manager at the following address:
SCCRTC – Attn: (Name of RTC staff/contract manager – may be different from Project Manager)
1523 Pacific Ave, Santa Cruz, CA, 95060

The invoices must include the following information:

1. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period by task;
2. Itemized expenses incurred during the billing period;
3. Total invoice/payment requested;
4. Total amount previously paid under this Agreement;
5. Report of expenditures by CONSULTANT and subconsultants for each task and subtask or milestone and estimated percentage completion by such divisions of work;
6. Written progress reports, in a format to be mutually agreed upon, that is sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations and is on schedule; provides communication of interim findings; addresses any difficulties or special problems encountered, so remedies can be developed; and other information as requested by COMMISSION.
7. CONSULTANT's final invoice must be submitted within 60-calendar days after acceptance of the CONSULTANT's work by the Contract Manager.

FEDERAL contracts ---replace A-H above with one of the following=select option 1, 2, 3, or 4

(Option 1 - Use paragraphs A through J below for Actual Cost-Plus-Fixed Fee contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format.)

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. COMMISSION will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COMMISSION's approved overhead rate set forth in the Cost Proposal. In the event, that COMMISSION determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by COMMISSION shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.
- B. In addition to the allowable incurred costs, COMMISSION will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, COMMISSION shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COMMISSION's Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COMMISSION including any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COMMISSION's Contract Manager at the following address:

(COMMISSION/NAME OF CONTRACT MANAGER)

(ADDRESS)

- H. The total amount payable by COMMISSION including the fixed fee shall not exceed \$(Amount).
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COMMISSION's Contract Manager.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

- J. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 2- For Cost per Unit of Work contracts, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and reletter the remaining paragraphs. Adjust as necessary for work specific to your project. Use Exhibit 10-H, Example #3 for Cost Proposal Format.)

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per (Insert time period, usually day). This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this contract.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

- C. The method of payment for this contract, except those items to be paid for on a specified rate basis, will be based on actual cost-plus-fixed fee. COMMISSION will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COMMISSION approved overhead rate set forth in the approved Cost Proposal. In the event, COMMISSION determines that changed work from that specified in the approved Cost Proposal and contract is required; the actual costs reimbursable by COMMISSION may be adjusted by contract amendment to accommodate the changed work. The

maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.

- D. In addition to the allowable incurred costs and specified rates of payment, COMMISSION will pay CONSULTANT a fixed fee of \$(Amount). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions.

*(Option 3 - Use paragraphs A through O for **Specific Rates of Compensation** contracts (such as on-call contract)s. Use Exhibit 10-H, Example #2 for Cost Proposal Format.)*

- A. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- B. After a project to be performed under this contract is identified by COMMISSION, COMMISSION will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COMMISSION Project Manager. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both COMMISSION and CONSULTANT.
- C. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.
- D. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- E. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this contract has been approved by COMMISSION, and notification to proceed has been issued by COMMISSION'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to COMMISSION and signed by an authorized representative of COMMISSION. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by COMMISSION.
- K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COMMISSION'S Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all

costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45-calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due COMMISSION that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to COMMISSION's Contract Manager at the following address:

(RTC+ NAME OF CONTRACT MANAGER)

(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by COMMISSION for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. The total amount payable by COMMISSION for all Task Orders resulting from this contract shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.
- O. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 4 - Use paragraphs A through F below for Lump Sum/Firm Fixed Price contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format.)

- A. The method of payment for this contract will lump sum. The total lump sum price paid CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Exhibit A: Scope of Services of this contract. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and COMMISSION. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by COMMISSION.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work or Project Schedule, COMMISSION shall have the right to delay payment or terminate this Contract in accordance with the provisions of Section 4 of this Agreement: Termination.
- C. Consultant shall not exceed milestone cost estimates as shown in Exhibit C: Fee Schedule, except with prior written approval of the Contract Manager.
- D. C. CONSULTANT shall not commence performance of work or services until this contract has been approved by COMMISSION and notification to proceed has been issued by COMMISSION'S Contract Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.
- E. D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by COMMISSION'S Contract Manager of itemized invoices. Invoices shall be submitted no later than 45-calendar days after the performance of work for which CONSULTANT is billing.

- F. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Exhibit C: Fee Schedule and shall reference this contract number and project title.
- G. Final invoice must contain the final cost and all credits due COMMISSION, including any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after Contract Manager's acceptance of CONSULTANT's work.
- H. The total amount payable by COMMISSION shall not exceed \$(Amount).
- I. Invoices shall be mailed to COMMISSION's Contract Manager at the following address:

(COMMISSION/NAME OF CONTRACT MANAGER)

(ADDRESS)

All contracts:

- J. Transportation and subsistence expenses shall not exceed the rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules or to employees under current U.S. General Service Administration rules.
- K. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- L. All subcontracts in excess of \$25,000 shall contain the above provisions.

3. **TERM.** (*at minimum: state start and end date*): This Agreement shall take effect on (DATE); contingent upon prior approval by the COMMISSION governing board, and the CONSULTANT shall commence work after notification to proceed by the COMMISSION'S Contract Manager. The Agreement shall end on (DATE), unless earlier terminated or extended by contract amendment. The CONSULTANT is advised that this Agreement is not binding and enforceable until it is fully executed and approved by the COMMISSION's board.

4. **EARLY TERMINATION.**

- A. COMMISSION reserves the right to terminate this Agreement upon giving CONSULTANT thirty (30) days advance written notice thereof. Upon the effective date of termination CONSULTANT shall cease all work under this Agreement. Within thirty days of the COMMISSION's receipt of CONSULTANT's final billing, COMMISSION shall pay CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined by COMMISSION to be reasonably necessary to effect such termination. Thereafter, CONSULTANT shall have no further claims against COMMISSION under this Agreement.
- B. OPTIONAL: COMMISSION may terminate this Agreement for CONSULTANT's default if a federal or state proceeding for the relief of debtors is undertaken by or against CONSULTANT, or CONSULTANT's principal, or if CONSULTANT or CONSULTANT's principal makes an assignment for the benefit of creditors, or if CONSULTANT breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) days after written notice thereof by COMMISSION. CONSULTANT shall be liable for any and all reasonable costs incurred by COMMISSION as a result of such default, including but not limited to reprourement costs of the same or similar services defaulted by CONSULTANT under this Agreement.

- C. **OPTIONAL:** CONSULTANT may terminate this Agreement by giving the COMMISSION at least one hundred and twenty (120) days advance written notice. CONSULTANT shall be liable for any and all reasonable costs incurred by COMMISSION as a result of such default, including but not limited to reprourement costs of the same or similar services defaulted or not provided by CONSULTANT under this Agreement.

5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.

CONSULTANT shall exonerate, indemnify, defend, and hold harmless the COMMISSION (which for the purpose of this Agreement shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- A. Any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney fees, incurred by COMMISSION in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT.

OR - Alt language from 10R: The CONSULTANT agrees to indemnify and hold harmless COMMISSION, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney fees, incurred by COMMISSION in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT.

- B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONSULTANT and CONSULTANT'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).
- C. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of COMMISSION.

6. SAFETY (use on all contracts regardless of funding)

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the COMMISSION Safety Officer and other COMMISSION representatives.
- B. If might be on rail line: CONSULTANT personnel and any subcontractors must submit and comply with the "right-of-entry agreement" and shall wear hard hats and safety vests at all times while working on the Santa Cruz Branch Rail Line.
- C. Areas within the limits of the project are open to public and private traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

D. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section.

7. INSURANCE.

CONSULTANT, at its sole cost and expense, for the full term of this Agreement, and any extensions thereof, shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COMMISSION and any insurance or self-insurance maintained by COMMISSION shall be excess of CONSULTANT'S insurance coverage and shall not contribute to it. Insurance is to be placed with insurers reasonably acceptable to COMMISSION.

A. Types of Insurance and Minimum Limits

- 1) Workers' Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONSULTANT has no employees and certifies to this fact by initialing here _____.
- 2) Automobile Liability Insurance for each of CONSULTANT'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONSULTANT'S employees), leased or hired vehicles, in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONSULTANT is not a material part of performance of this Agreement and CONSULTANT and COMMISSION both certify to this fact by initialing here ____/____.
- 3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO form CG 00 01, with a minimum limit of one million dollars (\$1,000,000)per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.
- 4) Professional Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit, if, and only if, this Subparagraph is initialed by CONSULTANT and COMMISSION ____/____.

If CONSULTANT normally carries insurance in an amount greater than the minimum amount required by the COMMISSION for this Agreement, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. Therefore, CONSULTANT hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Agreement.

B. Other Insurance Provisions

- 1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONSULTANT agrees that the retroactive date thereof shall be no later than the effective date of this Agreement, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONSULTANT may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of

interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable. The COMMISSION will not be responsible for any premiums or assessments on the policy.

- 2) All policies of Commercial General Liability Insurance shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of, the CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01, covering ongoing operations and products and completed operations.
- 3) All required insurance policies shall be endorsed to contain the following clause:
“This insurance shall not be canceled until after thirty (30) days (10 days for nonpayment of premium) prior written notice has been given to:
Santa Cruz County Regional Transportation Commission
Attn: Yesenia Parra
1523 Pacific Avenue
Santa Cruz, CA 95060

Should CONSULTANT fail to obtain such an endorsement to any policy required hereunder, CONSULTANT shall be responsible to provide at least thirty (30) days’ notice (10 days for non-payment of premium) of cancellation of such policy to the COMMISSION as a material term of this Agreement.

- 4) CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this Agreement with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:
Santa Cruz County Regional Transportation Commission
Attn: Yesenia Parra
1523 Pacific Avenue _____
Santa Cruz, CA 95060
- 5) The CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the COMMISSION. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the COMMISSION may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.
- 6) **If any insurance policy of CONSULTANT required by this document includes language conditioning the insurer’s legal obligation to defend or indemnify COMMISSION on the performance of any act(s) by the**

named insured, then said insurance policy, by endorsement, shall also name the COMMISSION as a named insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named insured, the COMMISSION may at its sole direction, but is not obligated to, perform any act required by the named insured under said insurance policies.

- 7) CONSULTANT shall do all things required to be performed by it pursuant to its insurance policies including but not limited to paying within five (5) work days, all deductibles and self-insured retentions (SIR) required to be paid under any insurance policy that may provide defense or indemnity coverage to COMMISSION or any additional insured.**

 - 8) CONSULTANT hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONSULTANT may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.**

 - 9) CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this Agreement by a subconsultant compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.**
- 8. RTC LANGUAGE/NOT CT: FEDERAL, STATE AND LOCAL LAWS. CONSULTANT warrants that in the performance of this Agreement, it shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. In the event of a conflict between the laws and lawful regulations of any government entities having jurisdiction over the project, the CONSULTANT shall notify COMMISSION of the nature and impact of such conflict. The COMMISSION agrees to cooperate and work with the CONSULTANT in an effort to resolve any conflict.**

Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on COMMISSION as a recipient of federal or state funds are imposed on CONSULTANT.

9. **NON-DISCRIMINATION AND COMPLIANCE PROVISIONS.** During and in relation to the performance of this Agreement, CONSULTANT agrees to the following:
- A. The CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow discrimination or harassment against any employee, applicant for employment, or subconsultant in any manner prohibited by Federal, State and local laws, including but not limited to race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), marital status, sexual orientation, age (over 40), veteran status, denial of family and medical care leave and denial of pregnancy disability leave, or any other non-merit factor unrelated to job duties.
 - B. Consultant and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
 - C. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.
 - D. CONSULTANT shall comply fully with all federal, State and local laws and regulations which prohibit discrimination. The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
 - E. ***Federally-funded contracts only:*** In addition, the CONSULTANT shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONSULTANT'S solicitation of goods and services, Definitions for Minority/Women/Disabled Business Enterprises are available from the COMMISSION Purchasing Division.
 - F. Consultant and its subconsultants shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with this section.
 - G. In the event of CONSULTANT'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations or orders the COMMISSION may cancel, terminate or suspend the Agreement in whole or in part. CONSULTANT may also be declared ineligible for further agreements with the COMMISSION.

10. HARASSMENT. The COMMISSION maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a COMMISSION employee's work performance or creates an intimidating, hostile or offensive work environment.

11. If funded by Federal planning or Federal Transit grant (per MFTA): FEDERAL CERTIFICATIONS AND ASSURANCES

A. CONSULTANT and all subcontractors shall comply, as applicable, with the FHWA "Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.334 and the federal transportation act (Moving Ahead For Progress in the 21st Century (MAP-21) act) and its successors thereto. It may include but is not limited to:

1. 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;
2. Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
3. Section 1101(b) of the SAFETEA-LU (Pub. L. 109-59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
4. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
5. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
6. 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
7. The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
8. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
9. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

B. CONSULTANT shall also comply with "Certifications and Assurances for FTA Assistance", including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53, published annually in the *Federal Register* and found online at http://www.fta.dot.gov/grants/12825_93.html.

The 2013 FTA Certifications includes the following areas under "Assurances Required of Each Applicant:"

1. Authority of Applicant and its Representatives
2. Standard Assurances
3. Intergovernmental Review Assurance
4. Suspension and Debarment Certification
5. U.S. OMB Assurances in SF-424B and SF-424D

12. FED Contracts Only: RESTRICTIONS ON LOBBYING.

(Include this article in all contracts where FEDERAL funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or COMMISSION appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

(A copy of the required certificates are included in LAPM and outlined in section 4 of the MFTA.)

13. CONFLICT OF INTEREST

- A. CONSULTANT shall disclose any financial, business, or other relationship with COMMISSION that may have an impact upon the outcome of this contract, or any ensuing COMMISSION construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COMMISSION construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. **LICENSES.** If a license of any kind is required of CONSULTANT, its employees, agents, or subcontractors by Federal or State law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, that CONSULTANT shall keep it in effect at all times during the terms of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

15. FED Contracts Only: DEBARMENT AND SUSPENSION CERTIFICATION.

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR Part

180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COMMISSION.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

(A copy of the required certification is included in LAPM.)

- 16. INDEPENDENT CONSULTANT STATUS.** CONSULTANT and COMMISSION have reviewed and considered the principal test and secondary factors herein and agree that CONSULTANT is an independent CONSULTANT and not an employee of COMMISSION. CONSULTANT is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONSULTANT is not entitled to any employee benefits. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONSULTANT rather than COMMISSION has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COMMISSION may exercise over the details of the work is slight rather than substantial; (b) CONSULTANT is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONSULTANT is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONSULTANT rather than the COMMISSION supplies the instrumentalities, tools and work place; (f) The length of time for which CONSULTANT is engaged is of limited duration rather than indefinite; (g) The method of payment of CONSULTANT is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COMMISSION; (i) CONSULTANT and COMMISSION believe they are creating an independent CONSULTANT relationship rather than an employer-employee relationship; and (j) The COMMISSION conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent CONSULTANT relationship, but rather that overall there are significant secondary factors which indicate that CONSULTANT is an independent CONSULTANT.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONSULTANT engaged under this Agreement is in fact an independent CONSULTANT.

17. FEDERAL ONLY: COST PRINCIPLES

- A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual cost items.
- B. The CONSULTANT and subcontractors shall comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., must be repaid by CONSULTANT to the COMMISSION.

18. RETENTION AND AUDIT OF RECORDS. For any purpose, including but not limited to determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., if applicable and other matters connected with the performance of the contract pursuant to Title 2, California Government Code, Chapter 6.5, Article 2, Section 8546.7; CONSULTANT, subconsultants, and the COMMISSION shall each maintain and make available for inspection all books, source documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the Agreement.

All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under this Agreement or until a final audit report is accepted by COMMISSION, whichever is later. The CONSULTANT shall make all such supporting information available for inspection and audit by representatives of STATE, the Bureau of State Audits, the Federal Government or any duly authorized representative of the state or federal government upon request. This includes access to any books, records, and documents that are pertinent to the fulfillment of this Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

Contractor and subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e direct labor, other direct costs, subrecipients/subcontractor, etc) and enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

19. INSPECTION OF WORK

The CONSULTANT and any subconsultant shall permit the COMMISSION, the STATE, and the FHWA or FTA if federal participating funds are used in this contract, to review and inspect the project activities and files at all reasonable times during the term of this Agreement including review and inspection on a daily basis.

20. ACKNOWLEDGMENT. CONSULTANT shall acknowledge in all reports and literature that the material is prepared for and on behalf of the COMMISSION.**21. WORK PRODUCTS/OWNERSHIP OF DATA**. All material, data, information, and written, graphic or other work produced under this Agreement is subject to the unqualified and unconditional right of the COMMISSION to use, reproduce, publish, display, and make derivative use of all such

work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so.

- A. Upon completion of all work under this contract, ownership and title to all custom letters, reports, documents, plans, specifications, and estimates and other products produced as part of this Agreement (herein "deliverables") will automatically be vested in the COMMISSION; and no further agreement will be necessary to transfer ownership to the COMMISSION. The CONSULTANT shall furnish the COMMISSION all necessary copies of data needed to complete the review and approval process.
- B. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- C. The COMMISSION may permit copyrighting reports or other contract products. If copyrights are permitted, the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- D. (RTC language) If any of the work is subject to copyright, trademark, service mark, or patent, CONSULTANT now grants to the COMMISSION a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.
- E. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Section.

22. CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to COMMISSION's operations, which are designated confidential by COMMISSION and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by COMMISSION relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COMMISSION's actions on the same, except to COMMISSION's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by COMMISSION, and receipt of COMMISSION'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

(For PS&E (final design) contracts add paragraph F, below, to paragraphs A through E, above.)

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than COMMISSION.

23. Federal Grants: NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

24. Federal Grants: EVALUATION OF CONSULTANT. CONSULTANT's performance will be evaluated by COMMISSION. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

25. Federal Grants: DRUG-FREE WORKPLACE. CONSULTANT shall comply with the provisions of Government Code § 8350 *et seq.*, regarding Drug-Free Workplace Certification, and with the U.S. DOT regulations "Drug-Free Workplace Requirements Grants" in 49 CFR Part 29, Subpart F.

26. Federal Grants: MODIFICATION OF AGREEMENT.

A. This Agreement may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COMMISSION's Contract Manager.

C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Fee Schedule, which is a part of this Agreement, without prior written approval by the COMMISSION's Contract Manager.

27. DISPUTES. This Agreement shall be construed under the laws of the State of California. Pending final resolution of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and shall comply with COMMISSION's instructions.

A. Any dispute, other than audit disputes, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the COMMISSION's Contract Manager and Executive Director, who may consider written or verbal information submitted by the CONSULTANT. The committee's determination regarding such dispute shall be final unless the committee determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.

B. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

For contracts that require submission of PS&E – add the following:

ALT B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by COMMISSION Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

28. AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post-completion audit of this Agreement that is not disposed of by agreement, shall be reviewed by the COMMISSION'S Contract Manager.
- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COMMISSION'S Executive Director of unresolved audit issues. The request for review will be submitted in writing. The Executive Director's determination regarding such dispute shall be final unless the Executive Director determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.
- C. Neither the pendency of a dispute nor its consideration by the COMMISSION will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater that are subject to the LAPM – includes capital and many planning projects).

- D. CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONSULTANT'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA'S workpapers. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COMMISSION contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COMMISSION at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

29. SUBCONTRACTING

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without prior written authorization by the COMMISSION'S Contract Manager, except that, which is expressly identified in the approved Fee Schedule.
- B. The CONSULTANT shall not assign the Agreement without the prior written consent of the COMMISSION.
- C. Any substitution of subconconsultants must be approved in writing by the COMMISSION'S Contract Manager prior to the start of work by the subconsultant.
- D. FED ONLY: Prompt Progress Payment to Subconsultants:
A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment

over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

E. **FED ONLY: Prompt Payment of Withheld Funds to Subcontractors:**

No subconsultant retainage will be held by the agency from progress payments due the prime CONSULTANT. Any retainage kept by the prime CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 30 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants. This clause shall be included in any subcontracts.

F. The CONSULTANT hereby agrees that neither CONSULTANT, nor any firm affiliated with the CONSULTANT, will bid on or enter into any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise.

G. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on or enter into any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

H. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions required by this Agreement to be applicable to those subconsultants.

30. **FEDERAL-ONLY DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION.**

(Include this section only when federal funds are used; incorporate LAPM Exhibits 10-I "Notice to Proposers DBE Information" and 10-J "Standard Contract Provisions for Subconsultant/DBE Participation" as required.)

This Agreement is subject to Title 49, part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure the California Department of Transportation, hereafter "Department," achieves its federally mandated statewide overall DBE goal, the Department encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of Agreements financed in whole or in part with Federal Funds.

Choose one of the following (A or B):

- A. For contracts with a specific DBE goal: Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26. If the contract has a DBE goal, CONSULTANT must meet the goal by using DBEs as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met.

A DBE may be terminated only with written approval by COMMISSION and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting COMMISSION’s consent for the proposed termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

- B. Contracts with no specific goal: While there is no specific DBE goal for this contract, the CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the award, administration and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

The requirements of 49 CFR Part 26, including Exhibit x “Notice to Proposers DBE Information”, shall apply to this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the COMMISSION deems appropriate.

31. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COMMISSION employee. For breach or violation of this warranty, COMMISSION shall have the right in its discretion to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

32. NOTIFICATION. All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

_____ (CONSULTANT)
 _____ (NAME), Project Manager
 _____ (ADDRESS)

COMMISSION:

Santa Cruz County Regional Transportation Commission (SCCRTC)
 _____, Contract Manager
 1523 Pacific Ave, Santa Cruz, CA 95060

33. COMPLETE AGREEMENT

- A. AGREEMENT: The two parties to this Agreement, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this Agreement constitutes the entire Agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be

performed; each agree to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.

- B. COMMISSION DESIGNEE: The Executive Director of COMMISSION, or his or her designee, shall have the authority to act for and exercise any of the rights of COMMISSION as set forth in this Agreement subsequent to, and in accordance with the authorization granted by the COMMISSION.
- C. COMPLETE AGREEMENT, INCLUDING ATTACHMENTS. This Agreement includes all exhibits, attachments, and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between COMMISSION and CONSULTANT, and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions. The COMMISSION’s waiver of CONSULTANT's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver for any future performance of such term(s) or conditions(s)
- D. Attachments are:
 - Exhibit A: Scope of Services
 - Exhibit B: Project Schedule (OPTIONAL)
 - Exhibit C: Fee Schedule
 - Exhibit D: Disclosure of Lobbying Activities, Standard Form (*Exhibit 10-Q, LAPM*) *Include only if grant funded (aka not TDA or RTC reserves)*
 - Exhibit E: Levine Act Statement (May be included with proposal instead and included in file) **IF FEDERALLY FUNDED:**
 - Exhibit x: Notice to Proposer DBE Information (*Exhibit 10-I LAPM*) – *Optional/part of RFP instead*
 - Exhibit x: Consultant Proposal DBE Commitment (*Exhibit 10-O1, LAPM*) – *Include IF RTC has set a DBE goal for contract; if not, just include 10-02*
 - Exhibit x: Proposer DBE Information (*Exhibit 10-O2 LAPM*)
 - Exhibit x: Local Agency Bidder DBE Information (*Exhibit 15-G, LAPM*)
 - Exhibit x: Consultant Certification of Contract Costs and Financial Management System (*Exhibit 10-K, LAPM*) – *for all contracts over \$150k, include for prime and all subconsultants; Add Exh. 10-A if over \$1M*
 - Exhibit x: Consultant in Management Position Conflict of Interest and Confidentiality Statement (*Exhibit 10-U, LAPM*) *If contract is for A&E management - signed by all consultant engineering staff in management positions) - (state & fed-funded)*

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. _____ to be executed on the date first written above.

1. CONSULTANT

By: _____
SIGNED

**2. SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

By: _____
SIGNED

PRINTED

PRINTED

Company Name: _____
Address: _____
Telephone:() _____
Fax: () _____
Email: _____

3. APPROVED AS TO INSURANCE: 4. APPROVED AS TO FORM:

Administrative Services Officer

COMMISSION Counsel

DISTRIBUTION:

- *RTC Fiscal & Contract Manager*
- *CONSULTANT*

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II. TIME OF PERFORMANCE:

This Agreement shall become effective upon SLOSAFE's notification to CONTRACTOR of its approval thereof and shall terminate five (5) years thereafter. Contract time will be from ___ through ___ with the option for two additional two-year terms at the sole discretion of SLOSAFE. This Agreement shall not be assigned without the prior written consent of SLOSAFE, and any attempt to assign without such consent shall be void and confer no rights on any third parties.

III. PAYMENT FOR SERVICES:

Payment to the CONTRACTOR shall be based on rate per call plus bonus as identified in Attachment B. Each invoice shall be due and payable on the thirtieth (30th) day after it is received by SLOSAFE.

IV. CONTRACTOR'S RESPONSIBILITIES

CONTRACTOR shall be responsible for the timely performance of all service addressed in the Scope of Work (Attachment A). The review, checking, approval, acceptance of, or payment for any services under this Agreement by SLOSAFE shall not relieve CONTRACTOR of the responsibility for the accuracy, completeness and coordination of CONTRACTOR's services. Nor shall such actions by SLOSAFE be construed to operate as a waiver of its rights under this Agreement or of any cause of action arising out of or in connection with the performance of CONTRACTOR's obligations under this Agreement.

V. SLOSAFE REPRESENTATIVE

SLOSAFE shall designate a Project Manager who shall represent SLOSAFE in all matters pertaining to the services to be rendered pursuant to this Agreement. He/She shall have authority to resolve disputes arising under this Agreement. Any other SLOSAFE personnel assigned to this Project shall be assigned for the convenience of SLOSAFE.

VI. CONTRACTOR'S REPRESENTATIVE

CONTRACTOR shall designate a Project Manager to represent CONTRACTOR. CONTRACTOR may designate others as its Project Manager from time to time as necessary. CONTRACTOR's Project Manager shall have authority to resolve disputes arising under this Agreement and shall be available during normal SLOSAFE working hours to discuss and solve any problems which may arise.

VII. INDEPENDENT CONTRACTOR STATUS

This Agreement is by and between SLOSAFE and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association between SLOSAFE and CONTRACTOR. CONTRACTOR understands and agrees that all persons furnishing services to SLOSAFE pursuant to this Agreement, except for SLOSAFE's project manager or persons from SLOSAFE assigned to the project by SLOSAFE, are, for purposes of Workers' Compensation liability, employees solely of CONTRACTOR and not of SLOSAFE. CONTRACTOR shall bear the sole responsibility and liability for furnishing Worker's Compensation benefits to such person for injuries arising from or connected with service performed on behalf of CONTRACTOR pursuant to this Agreement.

VIII. SUBCONTRACTOR

CONTRACTOR may, with SLOSAFE's approval, which shall not be unreasonably withheld or delayed, use a subcontractor(s) with respect to any of the services to be furnished by CONTRACTOR hereunder. CONTRACTOR shall notify SLOSAFE of the identity, qualifications and experience of any such subcontractor or subcontractors. SLOSAFE shall have no liability to any such subcontractor for payment for services performed by it and any subcontractors. CONTRACTOR under this Agreement is aware that the responsibility for payment for the services or any other work performed by any such subcontractor shall be solely the responsibility of CONTRACTOR.

IX. INSPECTION OF SERVICES

Duly authorized representatives of SLOSAFE shall have a right of access to the CONTRACTOR's plans, files (including electronic files), and other records relating to the project included in this CONTRACT, and may review services at appropriate stages during the performance of this CONTRACT.

X. NUMBER OF DOCUMENTS:

The CONTRACTOR shall provide SLOSAFE with originals of all deliverables (in hard copy and electronic form), and copies of all field notes, sampling and testing data, engineering reports, and other work products associated with the completion of work as described in the Scope of Work (Attachment A).

XI. OWNERSHIP OF DOCUMENTS:

All field notes, tracings, plans, specifications, maps, correspondence, sampling information, analytical laboratory data, reports, and other documentation prepared or obtained by the CONTRACTOR under the terms of this CONTRACT shall be the sole property of SLOSAFE, without restriction or limitation on their use. Nothing contained within this provision is intended to limit CONTRACTOR's rights, ownership, and the use of CONTRACTOR's designs, data, evaluations and instruments of service in

accordance with usual custom and practice in connection with the provision of professional services.

If any of these field notes, tracings, plans, specifications, maps, correspondence and other documentation prepared under the terms of this CONTRACT are used for any future work other than that specified herein, and if such documents are used without the CONTRACTOR's written acknowledgment, the CONTRACTOR shall be relieved of any liability caused by the use of same.

XII. COVENANT AGAINST CONTINGENT FEES:

The CONTRACTOR warrants that he/she has not employed or retained any company or person other than a bona fide employee, to solicit or secure this CONTRACT, and that he/she has not paid or agreed to pay any company or person other than an authorized employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. Any breach or violation of this warranty (by the CONTRACTOR), shall grant SLOSAFE the right to annul this CONTRACT without liability, or in its discretion to deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XIII. STANDARD OF CARE

All documents and products shall be in conformity with applicable State and Federal laws and shall be consistent with established standards for professional services.

XIV. CHANGES IN SERVICES:

Minor changes in the various tasks to be performed by CONTRACTOR may be made from time to time by written change orders issued by SLOSAFE Project Manager and agreed to in writing by CONTRACTOR. Such change orders shall not modify the overall purpose, terms or compensation provisions of the Agreement unless expressly set forth therein.

XV. TERMINATION:

Termination for Convenience. SLOSAFE may terminate this contract, in whole or in part, at any time by written notice, which shall include a date of termination, to the Contractor when it is in the SLOSAFE's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SLOSAFE to be paid the Contractor. If the Contractor has any property in its possession belonging to the SLOSAFE, the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

Termination for Default. If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SLOSAFE may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SLOSAFE that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, SLOSAFE, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure. SLOSAFE in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SLOSAFE's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from SLOSAFE setting forth the nature of said breach or default, SLOSAFE shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SLOSAFE from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for Any Breach. In the event that SLOSAFE elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SLOSAFE shall not limit SLOSAFE's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

In the event SLOSAFE terminates this Agreement in whole or in part as provided above, SLOSAFE may procure, upon such terms and in such manner as SLOSAFE may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to SLOSAFE for any excess costs for such services, which are similar in scope and level of effort; provided that SAFE shall use reasonable efforts to obtain such substitute services at the lowest available cost and provided, further, that CONTRACTOR shall continue the performance of this Agreement to the extent not terminated under the provisions of this Section. If, after notice of termination under the provisions of this Section, it is determined that CONTRACTOR was not in default the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.

In addition to the provisions herein, CONTRACTOR may, by written notice to SLOSAFE, immediately terminate the whole or any part of this Agreement if SLOSAFE fails to pay any monies due and payable by it to CONTRACTOR within forty (40) days after appropriate written demand therefore.

In the event of breach of this contract by CONTRACTOR, it would be impracticable or extremely difficult to fix the actual damages resulting from the breach and, therefore, CONTRACTOR agrees to pay to SLOSAFE, as liquidated damages and not as a penalty, the sum of \$100.00 for each day a call box is inoperative as a result of the unexcused failure of CONTRACTOR to maintain said box in accordance with this Agreement, which sum represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from a breach by CONTRACTOR.

The rights and remedies provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

XVI. NOTICES:

Any and all notices or other communications required or permitted by this CONTRACT or by law to be served on or given to either party hereto, by the other party hereto shall be in writing (or by Email as appropriate and agreed to by both parties) and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid addressed to:

SLOSAFE	CONTRACTOR
Ronald L. De Carli	name
Executive Director	title
SLOCOG	company
1150 Osos Street, Suite 202	address
San Luis Obispo, CA 93401	city/state
(805) 781-4219 phone	

XVII. INDEMNITY, PERFORMANCE BOND, AND INSURANCE:

A. Indemnification.

CONTRACTOR shall defend, indemnify and hold harmless SLOSAFE, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, including CONTRACTOR, and that arise out of or are made in connection with the acts or omissions, relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of SLOSAFE, its officers and employees. However, this indemnity will not

extend to any claims or losses arising out of the sole negligence or willful misconduct of the SLOSAFE, its officers and employees.

It is the intent of the parties to provide SLOSAFE the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this CONTRACT and the remaining language shall be given full force and effect.

Performance Bond.

CONTRACTOR shall provide a faithful performance bond in the sum of \$150,000.00 payable to SLOSAFE and executed by a corporate surety authorized to do business as a surety in the State of California and be on the accredited list of the United States Treasury Department. Such bond shall be conditioned upon faithful performance by CONTRACTOR of the terms and conditions of this Agreement and shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon.

Insurance. CONTRACTOR, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of CONTRACTOR's work under this Agreement and acceptance by SLOSAFE. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the SLOSAFE, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term SLOSAFE shall include officers, employees, volunteers and agents of SLOSAFE and San Luis Obispo Council of Governments, individually or collectively.

Minimum Scope and Limits of Required Insurance Policies. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to SLOSAFE:

Commercial General Liability Insurance Policy (CGL). Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein ISO) Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

- \$1,000,000 each occurrence (combined single limit);
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and
- \$1,000,000 general aggregate.

The general aggregate limits shall apply separately to CONTRACTOR's work under this Agreement.

Business Automobile Liability Policy (BAL). Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 Any Auto (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. CONTRACTOR shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of SLOSAFE.

Workers Compensation and Employers Liability Insurance Policy (WC/ EL). This policy shall include at least the following coverages and policy limits:

Workers Compensation insurance as required by the laws of the laws of the State of California; and

Employer's Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein BI); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI disease.

Professional Liability Insurance Policy (PL). This policy shall cover damages, liabilities, and costs incurred as a result of CONTRACTOR-s professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). CONTRACTOR shall notify SLOSAFE if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

Deductibles and Self-insurance Retentions. Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by CONTRACTOR and approved by SLOSAFE before work is begun pursuant to this Agreement. At the option of SLOSAFE, CONTRACTOR shall either reduce or eliminate such deductibles or self-insured retentions as respect SLOSAFE, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to SLOSAFE guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

Endorsements. All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

A Cross Liability, Severability of Interest or Separation of Insureds clause (CGL & BAL);

SLOSAFE and San Luis Obispo Council of Governments, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of CONTRACTOR's performance of work under this Agreement (CGL & BAL);

If the insurance policy covers an accident basis, it must be changed to an occurrence (CGL & BAL)

This policy shall be considered primary insurance with respect to any other valid and collectible insurance SLOSAFE may possess, including any self-insured retention SLOSAFE may have, and any other insurance SLOSAFE does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);

No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to SLOSAFE at the address set forth below (CGL, BAL, WC /EL & PL);

CONTRACTOR and its insurers shall agree to waive all rights of subrogation against SLOSAFE, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

Deductibles and self-insured retentions must be declared (All Policies).

Absence of Insurance Coverage. SLOSAFE may direct CONTRACTOR to immediately cease all activities with respect to this CONTRACT if it determines that CONTRACTOR fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this CONTRACT. Any delays or expense caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and expense. At SLOSAFE's discretion, under conditions of lapse, SLOSAFE may purchase appropriate insurance and charge all costs related to such policy to CONTRACTOR.

Proof of Insurance Coverage and Coverage Verification. Prior to commencement of work under this CONTRACT, and annually thereafter for the term of this CONTRACT, CONTRACTOR, or each of CONTRACTOR's insurance brokers or companies, shall provide SLOSAFE a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for CONTRACTOR shall have, and provide evidence of, a Best Rating

Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

San Luis Obispo Council of Governments
Attn: Tim Gillham, Transportation Planner
1114 Marsh Street
San Luis Obispo, CA 93401

XVIII. GENERAL COMPLIANCE WITH LAWS:

The CONTRACTOR shall comply with all Federal, State and local laws and ordinances applicable to the performance of the work covered by this CONTRACT in accordance with the requirements described in Attachment C, attached hereto and incorporated herein.

XIX. PROFESSIONAL'S CERTIFICATION:

The assigned professional shall be required to certify all reports and other documents furnished to SLOSAFE under this CONTRACT to the extent required by the Professional Engineer's Act and the Land Surveyor's Act of the State of California, and the usual custom and practice for similar services.

XX. EMPLOYMENT STATUS:

CONTRACTOR shall, during the entire term of the CONTRACT, be construed to be an independent contractor and nothing in this CONTRACT is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow SLOSAFE to exercise discretion or control over the professional manner in which CONTRACTOR performs the services which are the subject matter of this CONTRACT; provided always however that the services to be provided by CONTRACTOR shall be provided in a manner consistent with all applicable standards and regulations governing such services.

CONTRACTOR understands and agrees that CONTRACTOR's personnel are not and will not be eligible for membership in or any benefits from any SLOSAFE group plan for hospital, surgical or medical insurance or for membership in any SLOSAFE retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for any other benefit which accrues to a SLOSAFE employee.

XXI. GOVERNMENT CODE SECTION 7550:

The CONTRACTOR acknowledges his/her obligation with respect to the required notice under Government Code Section 7550 on any documents or written reports prepared.

XXII. SUCCESSOR AND ASSIGNS:

This CONTRACT shall be binding upon the heirs, successors, executors, administrators and assignees of the respective parties hereto.

XXIII. ENTIRE AGREEMENT AND MODIFICATION:

This CONTRACT supersedes all previous contracts and constitutes the entire understanding of the parties hereto. CONTRACTOR shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. CONTRACTOR specifically acknowledges that in entering into and executing this CONTRACT, CONTRACTOR relies solely upon the provisions contained in this CONTRACT and no others.

XXIV. NON-ASSIGNMENT OF CONTRACT:

Inasmuch as this CONTRACT is intended to secure the specialized services of the CONTRACTOR, CONTRACTOR may not assign, transfer, delegate or sublet any interest therein without the prior written consent of SLOSAFE and any such assignment, transfer, delegation or sublease without SLOSAFE's prior written consent shall be considered null and void.

XXV. COVENANT:

This CONTRACT has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this CONTRACT shall be determined and governed by the laws of the State of California. The parties agree that the most significant duties and obligations of the parties created hereunder are performable in San Luis Obispo County and shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this CONTRACT.

XXVI. ENFORCEABILITY:

If any term, covenant, condition or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

XXVII. WARRANTY OF CONTRACTOR:

CONTRACTOR warrants that CONTRACTOR and each of the personnel employed or otherwise retained by CONTRACTOR are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

XXVIII. FORCE MAJEURE:

CONTRACTOR shall not be responsible for failure or delay in performing any obligation under this Agreement due to causes beyond its control, including, but not limited to, fire, storm flood, earthquake, explosion, accidents, acts of public enemies, war, insurrection, salvage, epidemic, quarantine, restrictions, embargoes, failures or delays in transportation or in sources of supply of parts or components, delays in obtaining consents or approvals from SLOSAFE or its Project Manager or from other county or state agencies, acts of God, acts, laws, rules, regulations, directions or restrictions of any local or national government or any agency thereof, or any order of any court of competent jurisdiction.

XXIX. VALIDITY

The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision.

No waiver or breach of any provision of this Agreement by any party shall constitute a waiver of any other breach of such provision. Failure to enforce at any time any provision of this Agreement shall not be construed as a waiver thereof.

IN WITNESS WHEREOF, SLOSAFE and CONTRACTOR have executed this CONTRACT effective on the first aforementioned day and year.

BY
SLOSAFE
SAN LUIS OBISPO
COUNCIL OF GOVERNMENTS

CONTRACTOR
COMPANY

By:___

By:___

Jan Howell Marx, President
San Luis Obispo Council of Governments

name/title
company

Dated:___

Dated:___

ATTEST:

Ronald L. De Carli
Executive Director
San Luis Obispo Council of Governments

Dated: _____

APPROVED TO FORM:

Timothy McNulty
SLOCOG Legal Counsel

Dated: _____